REPORT

OF

THE STUDY TEAM

ON

LEAKAGE OF FOREIGN EXCHANGE

THROUGH

INVOICE MANIPULATION

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

1971

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ANNEXURE I

EXTRACT FROM PUBLIC ACCOUNTS COMMITTEE (1969-70)
(FOURTH LOK SABHA) NINETY-EIGHTH REPORT.

1.12 The Committee note that pursuant to their recommendations, Government have appointed a Study Team to go into the problem of over-invoicing of imports and under-invoicing of exports. The Committee hope that the Study Team will examine the problem in all its aspects and that, on the basis of their suggestions, Government would be able to devise effective Checks at the licensing, foreign exchange releasing and importation stages, so as to eliminate the mal-practices connected with over-invoicing and under-invoicing.

1.13 The Committee would like Government to give particular consideration to the following suggestions:

(i) The Committee understand that the Reserve Bank of India has at present no machinery to check declarations of value of goods by importers and exporters. The Customs Authorities have appraising units and they should be charged with the responsibility for verifying whether the declared values of exports and imports are fair and in accordance with exchange control law and requirements.

(ii) Valuation of exports/imports is a job which calls for expertise and a knowledge of prevalent market conditions in India and abroad. It will, therefore, be necessary to ensure that adequate market intelligence is made available to the customs officers who do appraisal work.

(iii) There would be temptations to over-value imports where import licences are issued liberally for essential machinery and plant. A comprehensive scrutiny of imports of the type where there is possibility of over-valuation should therefore be conducted in Customs Houses. Any powers that the customs officers may require for this purpose, such as calling for documents and other evidence, should be provided to them under law. There should likewise be a scrutiny of selected exports, but the procedures for this purpose should be such that they do not delay shipments.

(iv) The experience in the cases dealt with by the Committee in their Fifty-Sixth Report indicates that prosecutions tend to be drawn out. Delay is likely to vitiate the very purpose of prosecution. It makes establishment of guilt difficult and tones down the deterrent effect of penalties. The Committee would like Government to examine whether a special procedure could be prescribed so that prosecution proceedings could be quickly completed in cases of this type. In dealing with foreign exchange offences,

except those which are petty in nature, the emphasis should be on prosecutions rather than adjudication.

(v) Government have themselves stated that there are some lacunae in Exchange Control Regualtions and have mentioned as an instance the fact that the existing regulations do not cast any obligation on authorised dealers in foreign exchange to verify whether remittances arranged on behalf of importers are matched by the value of goods actually imported. Loopholes of this kind should be plugged. The Estimates Committee had also drawn the attention of Government to obvious deficiencies and lacunae in the provisions of the Foreign Exchange Regulation Act and rules and orders etc., thereunder. The law should, therefore, be streamlined so that:

(a) the onus of proving that a fair value of exports/imports has been declared is on the exporter/importer;

(b) in case of exports, where payment has not been received, the onus is cast on the exporter to prove that reasonable steps have been taken for realisation;

(c) persons who conspire or aid or abet or counsel or procure any other person to contravene the exchange control regulations could be penalised under the Act;

(d) provisions regarding penalties are so framed as to operate as an adequate deterrent to potential offenders;

(e) offences under the foreign exchange regulations are included in the schedule of offences calling for extradition proceedings, if necessary.

It is, however, not the intention of this Committee that omissions arising out of minor procedural deviations inadvertently committed should be visited with punishment.

ANNEXURE II

EXTRACT FROM THE REPORT OF THE STUDY TEAM ON THE CUSTOMS DEPARTMENT — PART - I.

4.4 Section 14, Customs Act, 1962 and Rules made under section 14(1)(b) thereof contain the law on value for customs purposes. The main ingredients of the definition are that:—

(a) it is the price as between a buyer and a seller independent of of each other;

(b) it is the price charged in the ordinary course of international trade;

(c) the price is with reference to delivery at the time and place of importation; and

(d) where such a price is not ascertainable its nearest equivalent is determined in accordance with rules made by Government.

4.5 By and large in practice the c.i.f. value as shown in the invoice is accepted. The following situations, however, give rise to disputes:—

(a) There is a difference as between the prices for two or more like imports which cannot be explained as genuine and conforming to the definition of 'value'in the Customs Act, e.g., some special discount or rebate not covered by the definition.

(b) The importer and supplier are not fully independent, e.g., a sole agent or a subsidiary.

(c) There is deliberate misdeclaration with or without the collusion of the foreign supplier, e.g., under-invoicing as disposal stock, sub-standard etc.

Appraisers maintain personal records of invoice values in the "Invoice Value Register". Enquiries are also made with the trade in case of doubt and comparison made with invoices, quotations etc. for like goods. These or entries on the invoice itself may disclose some inadmissible reduction in price, even if genuine. Appraisers also try to obtain intelligence concerning attempts at deliberate misdeclaration.

As regards (b) the special relationship may get disclosed from some document filed with the bill of entry or otherwise and then the appraiser may make full enquiries. Thereafter, the appraiser will reappraise the goods and determine the appropriate value which would be subject to the usual supervisory checks by principal appraiser, assistant collector etc. as also to the usual appellate and revisionary remedies. In (b) since the enquiries

are normally prolonged—much more than in the other two cases—goods are assessed to duty provisionally and released, assessments being finalised on conclusion of enquiries. These assessments may continue in dispute under appeal and revision for a further period of time and since any such re-appraisement affects series of imports made by the importer the number of assessments in dispute can become quite large.

4.6 (i) Although the basis is price in the foreign supplying country there is almost no arrangement for obtaining adequate information/intelligence systematically or even ad hoc from these foreign countries. U.S. A. has an elaborate system of customs agents and Consular certification of invoices. Australia also has customs officers posted in important foreign centres for this purpose.

(ii) There is no systematic collection, compilation, collation, comparison and study of valuation data even inside the country. The maintenance of invoice registers is on an individual basis and cannot provide a systematic check even within the same port let alone as between different ports.

(iii) The collection of intelligence is also "individualistic" and not systematic.

(iv) There is no adequate and systematic co-ordination with other authorities like Department of Economic Affairs, Reserve Bank of India, Company Law Department etc., to obtain information as a matter of routine concerning associations of various types between importers in India and suppliers abroad.

(v) Almost every case of imports by connected parties throws up a large number of disputed assessments which remain under dispute for long periods, mainly because the normal system of original, appellate and revisionary decisions following one after the other operates in these cases also.

(vi) It has also been stated by trade representatives that the rules made under section 14(1)(b) of the Customs Act are not clear and a suggestion has been made that they should be simplified and suitable illustrative examples given to make their real purpose clear.

RECOMMENDATIONS

4.7 (i) Customs officers should be stationed at important foreign centres for collecting information and intelligence and making enquiries where necessary. They could also attend to public relations (particularly for passengers - both

Indian and foreign) dissemination of information concerning Indian Customs Laws and procedures and as liaison officers between the department and its counterparts abroad.

(ii) A Central Information Exchange should be set up to compile valuation data among others and make pertinent special studies.

(iii) The Central Exchange should co-ordinate with other authorities for obtaining information concerning special relationships in a systematic manner.

(iv) Determination of values in accordance with the Rules made under section 14(1)(b), Customs Act, 1962 should be done centrally by a special unit—say a unit in the Central Exchange—with approval of the highest competent authority without need for any further agitating of the matter departmentally. To the extent feasible such determination may be made on a mutually agreed basis.

(v) The valuation rules should be recast and for the guidance of trade and staff, explanatory notes to valuation rules with illustrative examples should be published.

(vi) Provisional duty bonds should be printed so that there is no delay in the process of filing of bonds.

(a) VALUATION

7.7 Unlike imports, export duty is leviable only on a few items. The importance of export valuation lies mainly in the need to ensure realisation of full foreign exchange. Various types of export rebates and incentive schemes tend to blur the picture. Check of export values is thus important and may also be complicated. At the same time, it is equally important that shipments should not get delayed.

7.8 The present arrangements for control over export valuation do not seem to be very clear or effective. The Reserve Bank does not, we understand from its representatives, exercise any check on the correctness of the declared export values, but takes it that Customs have done it. It is only when there is a serious discrepancy or the exporter represents later that he cannot obtain the declared foreign exchange that the Reserve Bank seeks an explanation from him. The reason, it appears, is that the Reserve Bank of India has no arrangement or agency to exercise a check in this regard.

7.9 It appears to us that since Customs are directly concerned with the scrutiny and clearance of export transactions and with "value" in international trade that department would be the most appropriate agency to check valuation of exports for purposes of foreign exchange realisation also. The manner in which the Customs Department may exercise this check without

causing avoidable delay to shipment has to be devised. The basis for the check has naturally to be in the definition of "value" in the Customs Act, with this proviso that penal action would be taken under the Customs laws only in those cases where the declared value is less than the "value" under the Customs Act. / If declared value is higher, it may be a genuine sale at an extra profit or mala fide and if mala fide penal or corrective action should appropriately be taken under the laws or schemes at which the malfide declaration is aimed, e.g., over-valuation for obtaining large import entitlement licences./

7.10 Where there is under-declaration of value (even after making due allowance for drawbacks, rebates and other forms of export reliefs), the case can be handled in one of the following ways:—

(i) if the under-valuations is clear beyond any doubt appropriate penal proceedings may be initiated, but the export allowed on declaration of proper value, against a suitable bond for compliance with final decisions; or

(ii) if the case requires further enquiry and investigation, the export may be allowed on declared value against a bond for compliance with final decision after completion of enquiry including repatriation of full foreign exchange.

7.11 In respect of our traditional exports at least another alternative, and a better alternative, is available in the type of arrangement that has been working on an informal basis in respect of jute exports through Calcutta known as "The Jute Contract Registration Scheme". This scheme should be given a legal basis so that it can be enforced on all exporters. It is possible that this procedure has the effect more or less of fixing minimum or floor prices and to the extent that declarations may ;tend to fall to the floor price level there would perhaps be some loss. But it introduces an orderliness in export pricing and its ill-effects can be minimised by intelligent and well-informed operation of the scheme. We have suggested elsewhere that customs officers should be posted at key centres abroad and they should assist in keeping the department informed of ruling prices and market trends generally as also inquiry into the facts of individual transactions as necessary.

7.12 A further measure of control on export valuation would be to conduct a random percentage check on declarations after shipment, which check could be detailed and meticulous, taking into account all relevant factors like production, costs, incentives, ruling prices abroad, profit margins etc. This could be done by the Central Exchange for Assessment Data recommended elsewhere.

7.13 At present G.R. forms are filed by exporters in three copies—the original to customs and the duplicate and triplicate to the Exchange Bank. The original G.R. forms are detached from the original shipping bills after the shipping bills have been passed by the indoor scrutinising branch and forwarded to the Reserve Bank of India to form the basis on which the Reserve

Bank exercises check for ensuring realisation of the foreign exchange. It was suggested that the system is not proof against some of the original G.R. forms escaping receipt and registration by the Reserve Bank of India. On the other hand shipping bills passed by customs bear a serial number. If, therefore, instead of the G.R. form an extra copy of the shipping bill, if necessary, amplified to include essential declarations under the F.E.R.Act so as to serve the purposes of the original G.R. forms, is obtained by the Reserve Bank of India from the Custom House, it would ensure that no shipment escapes accounting for foreign exchange purposes. Representatives of the Reserve Bank of India felt that this arrangement may not suit them as it would be difficult to align the shipping bill forms with the G.R. forms they would receive from the exchange banks. This does not seem to be a serious difficulty because it should be possible to correlate individual shipping bills with the relevant G.R. forms by adopting some system of numbering. We, therefore, recommend this suggestion for Government's further consideration.

ANNEXURE III

RELEVANT EXTRACTS FROM THE SUMMARY OF RECOMMENDATIONS OF THE REPORT OF THE WORKING GROUP ON CUSTOMS & CENTRAL EXCISE ADMINISTRATION (OCTOBER, 1968)

CHAPTER X — Exports

61. The meaning of the term "full Export value" used in the Foreign Exchange Regulation Act should be made explicit. (10.9)

62. The Customs authorities should be entrusted with the exclusive jurisdiction and responsibility for verifying if declared values for export are fair and in accordance with Exchange Control Law and requirements. If necessary, amendments to the Foreign Exchange Regulation Act should be carried out to remove all doubts regarding the legal competence and jurisdiction of Customs Officers to check valuation. (10.10)

63. As valuation of exports is dependent on the facts of the particular transaction as declared, being checked with reference to similar other transactions and prevalent market conditions in India and in the country of destination, some arrangements have to be made to ensure progressively that these details become available to customs authority. (10.11)

64. The procedures for check on values should be, as far as possible, so designed as to avoid detention of the consignment in the port. (10.12)

65. While deliberate and mala fide misdeclaration of the value should be visited with severest of penalties provided by law, any such punitive measures based merely on difference of opinion between the Customs authorities and the exporter would not be desirable. The power under Section 12(5) of the F.E.R. Act may be conferred on the Customs authority. (10.13)

66. A system of post-shipment scrutiny of values of exports on a random sample basis by the Customs authorities is necessary. The law should provide for blacklisting of the exporter and appropriate penal action when any misdeclaration is disclosed. (10.14)

67. The scope of extending State trading in exports of important and sensitive items should be examined. (10.15)

68. A system of advance registration of export contracts for scrutiny and approval of value for exchange control purposes may be instituted in respect of staple commodities. (10.16)

69. Wherever feabile, floor prices may be fixed below which exports would not be permitted. (10.17)

70. For effective control over prompt and full realisation of foreign exchange appropriate follow-up action is required. (10.18)

71. We agree with the suggestion of the Customs Study Team that an extra copy of the shipping bill amplified to include essential declaration under the F.E.R. Act should replace the G.R. form to provide means to ensure that no shipment escapes accounting. (10.19)

72. Special units to take follow-up action should be set up in all Exchange Control offices having export work to ensure that all export transactions result in realisation of due foreign exchange without delay and to initiate prompt proceedings including black-listing for a specified period against the defaulting exporters. (10.20)

73. The law should provide that if payment has not been received within the prescribed period, it shall be presumed that the exporter of the goods or the person entitled to receive the payment, has not taken all reasonable steps and so to have contravened the law and the onus will be on him to prove otherwise. (10.21)

74. A system of registering all exporters and allotting them a suitable number or identifying mark indicative of the fact that they are so registered should be evolved and exports by unregistered exporters should be prohibited. (10.22)

75. The period of realisation and surrender to the authorised pool may be restricted to 120 days from the date of exportation or immediately after receipt whichever is earlier. (10.23)

CHAPTER XII — Payments

83. It should be made obligatory on the part of the importer who makes the remittance for imports to submit the Exchange control copy of Customs bill of entry to the authorised dealers before or after clearance within a stipulated period and on the authorised dealers to forward it to the Reserve Bank of India. This should apply to all cases including the ones where the relative bills of exchange and/or shipping documents are collected through the medium of the authorised dealer. (12.4)

84. A post clearance detailed scrutiny of a random sample of imports of the types where there is a scope for over valuation should be conducted by special unit set up in the Customs Department. The law should be amended to allow for such an enquiry including calling for all relevant documents and other evidence as also to provide for imposition of appropriate penalties including prosecution. (12.5)

85. A similar sample survey of all remittances against imports to verify that:—

(i) each remittance is covered by proper import by tallying with proof of imports;

(ii) imports, for which there is a general exemption from trade control, do not in fact involve any foreign exchange expenditure;

(iii) reimbursements are in fact received in cases of intermediary financing;

(iv) letters of credit are not opened without the necessary import licence nor without complying with the conditions of the licence; and

(v) that the authorised dealers are enforcing the exchange control regulation properly in the exercise of the various powers delegated by the Reserve Bank of India. (12.6).

86. Our ultimate goal should be to remove restrictions on foreign travel. But in the present position of our exchange resources this aim should be approached gradually. At the same time, it is essential that the restrictions and their applications should be objective and impersonal. Either private hospitality should not qualify for foreign travel or the artificial and subjective distinctions now made should be removed. If it has, to qualify, an objective rule may be made providing for permission to travel to any individual invited abroad once in three years or so. (12.12)

87. The general control on foreign travel should be made more effective. Relaxations given to dock passengers may be removed. The permitted traveller should be required to abide by the terms and conditions of the permission, failing which he should be liable to appropriate penalties. (12.13)

88. The law may be amended to vest powers in the Reserve Bank to stipulate conditions forbidding overstayal or visits to other countries not included in the exchange or travel permits. (12.13)

89. Specific powers should be taken under the Act for licensing travel agents on the lines of authorised dealers and money changers and for inspecting books and other documents of the travel agents as provided to Section 19(H) of the F.E.R. Act. (12.13)

90. The best safeguard against harassment, patronage and corruption is inadequate publicity being given to the rules, regulations and procedures as also to the decisions taken both to grant and to reject. A satisfactory schemes for due publicity in this field should be worked out and adopted. (12.14)

CHAPTER XV — Offences and penalties

113. Petty infringements of law, like private personal imports in small excess of baggage concession, technical infringements of the Customs, Central Excise and Foreign Exchange Regulation or infringements involving petty amounts may be compounded; power of compounding being vested in appropriate authorities subject to prescribed value limits. (15.5)

114. Infringements of law of a more serious nature would be dealt with through departmental adjudication as at present. (15.6)

115. The normal rule with regard to Foreign Exchange offences except petty infringement should be prosecution in courts of law. (15.6)

116. Time has come when the setting up of separate courts to deal with infringements of union laws should be seriously considered. (15.7)

117. The Government should consider whether prosecution proceedings could not be further speeded up for certain classes of offences including those of conspiracy by committing the case for trial before the High Courts with special procedures to be adopted. (15.8)

118. The Economic Offences Wing should come under the administrative control of the Ministry of Finance and the personnel in it should have adequate experience of administering the relevant fiscal laws. (15.9)

119. The power to make rules for the publication of the names and other particulars of the persons found guilty of infringement of Foreign Exchange Regulation Act should be made operative. Similar powers should also be obtained and exercised in Customs and Central Excise laws. (15.10)

120. Offences under the Foreign Exchange Regulation Act may also be included in the schedule of offences where extradition proceedings can be taken. (15.11).

ANNEXURE IV

LIST OF BODIES AND PERSONS INTERVIEWED BY THE STUDY TEAM ON LEAKAGE OF FOREIGN EXCHANGE THROUGH INVOICE MANIPULATION

1. Federation of Indian Chambers of Commerce & Industry, New Delhi.
2. Bengal Chamber of Commerce & Industry, Calcutta.
3. Madras Chamber of Commerce, Madras.
4. Hindustan Chamber of Commerce, Madras.
5. Andhra Chamber of Commerce, Madras.
6. Indian Chamber of Commerce, Cochin.
7. All India Exporters Association, Bombay.
8. All India Manufacturers' Organisation, Bombay.
9. Indian Jute Mills Association, Calcutta.
10. Calcutta Jute Fabrics Shippers Association, Calcutta.
11. The Engineering Association of India, Calcutta.
12. The Indian Engineering Association, Calcutta.
13. Indian Engineering Association (Southern Zone), Madras.
14. Indian Tea Association, Calcutta.
15. Tea Trade Association of Cochin, Cochin.
16. Southern India Skin & Hides Merchants' Association, Madras.
17. Bombay Diamond Merchants' Association, Bombay.
18. Goa Minerals Exporters' Association, Bombay.
19. Indian Sea Food Exporters' Association, Cochin.
20. Indian Motion Pictures Export Corporation Ltd., Bombay.
21. Members of Mica Export Trade, Calcutta.

Export Promotion Councils

22. Engineering Export Promotion Council, Calcutta.
23. Shellac Export Promotion Council, Calcutta.
24. Chemicals & Allied Products Export Promotion Council, Calcutta.
25. Gem & Jewellery Export Promotion Council, Bombay.
26. Plastics & Linoleum Export Promotion Council, Bombay.
27. Basic Chemicals, Pharmaceuticals Export Promotion Council, Bombay.
28. Wool & Woollen Export Promotion Council, Bombay.
29. Silk & Rayon Textile Export Promotion Council, Bombay.
30. Cotton Textile Export Promotion Council, Bombay.
31. Tobacco Export Promotion Council, Madras.
32. The Leather Export Promotion Council, Madras.
33. Spices Export Promotion Council, Cochin.
34. Cashew Export Promotion Council, Cochin.
35. Marine Products Export Promotion Council, Cochin.

Commodity Boards

36. Shri A.K. Roy, Chairman, Tea Board, Calcutta.
37. Shri H.G.V. Reddy, Chairman, Coffee Board, Bangalore.
38. Shri R.R. Menon, Chairman, Coir Board, Cochin.

39. All India Handicrafts Board, New Delhi.
40. Silk Board, Bombay.

Public Undertakings

41. Shri C.P. Srivastava, Chairman & Mg. Director, Shipping Corporation, Bombay.
42. Shri B.B. Gujral, Director, State Trading Corporation, New Delhi.
43. S/Shri S.K. Mukerjee and Ramachandran, Directors, Minerals & Metals Trading Corporation, New Delhi.
44. Shri P.B. Satagopan, Secretary, Export Credit & Guarantee, Corporation, Bombay.
45. Life Insurance Corporation of India, Bombay.
46. National Mineral Development Corporation, New Delhi.

Research Institutions

47. Shri H.D. Shourie, Director General, Indian Institute of Foreign Trade, New Delhi.
48. Shri S. Bhoothalingam, Director General, National Council of Applied Economic Research, New Delhi.
49. Professor B.R. Shenoy, Director, Economic Research Centre, New Delhi.

Eminent individuals

50. Shri N.A. Palkhivala, Senior Advocate, Supreme Court of India, New Delhi.
51. Shri A.N. Sattanathan, Madras.

Banks

52. Shri Prem Prakash, State Bank of India, Bomaby.
53. S/Shri McRitchie and Barnes, Chartered Bank, Bombay.
54. Shri D. Thanawala, Bank of India, Bombay.
55. Shri Mitchell, National and Grindlays Bank, Bombay.
56. Officers of Exchange Control Department, Reserve Bank of India, Bombay.

Custom House Agents

57. Shri J.B. Shah, Bombay.
58. Shri Arvind Pariek, Bombay.
59. Shri Paul, Bombay.

Officers of Government Departments

60. Shri B.N. Banerji, Chairman, Tariff Commission, Bombay.
61. Shri C.J. Rebello, Chief Controller of Imports & Exports, New Delhi (with S/Shri S.R. Minocha and Takhat Ram).

62. Shri M.A. Rangaswamy, Textile Commissioner, Bombay accompanied by S/Shri S.K. Bagchi and R. Viswanathan.
63. Shri S.P. Mukerjee, Jute Commissioner, Calcutta.
64. Shri Gopalan Nair, Deputy Director, General, Shipping, Bombay.
65. Shri S.K. Sinha
66. Shri M.M. Vadi
67. Dr. A. Seetharamia
} Senior Industrial Advisers, D.G.T.D., New Delhi.
68. Shri S.S. Sidhu, Iron & Steel Controller, Calcutta.
69. Shri Brij Raj Bahadur
70. Shri C.N. Modawal
71. Shri N.P. Jain
72. Mrs. S.L. Singla
} Directors, Ministry of Foreign Trade, New Delhi.
73. Smt. M.D' Costa, Joint Chief Controller of Imports & Exports, Bombay. (Accompanied by Km. S.D. Maratha, D' Souza and S. Venkat).
74. Shri S.K. Srivastava, Director, Revenue Intelligence, New Delhi.
75. Shri M. Ramachandran, Director, Customs & Central Excise Training School, New Delhi.
76. Shri P. Kandaswamy, Joint Director, Economic Offences Wing, Central Bureau of Investigation, New Delhi.
77. Shri G.S. Sawhney, Collector of Customs, Bombay (Accompanied by S/Shri M.K. Punshi, S. Narayanan, N.H. Saifee, A.K. Dutt and Mahadevan).
78. Shri M.S. Mehta, Collector of Customs (Preventive), Bombay.
79. Shri A.K. Bandyopadhyaya, Collector of Customs, Calcutta (Accompanied by S/Shri Bhujangaswamy and Chari).
80. Shri D.N. Mehta, Collector of Customs, Madras (Accompanied by Shri M.M. Sethi).
81. Shri L.S. Marthandam, Collector of Customs & Central Excise, Cochin.
82. Shri A.J. Rana, Additional Director, Directorate of Enforcement, New Delhi (Accompanied by S/Shri Swaminathan and Bagai).

6th June, 1971.

To

The Finance Minister,
Government of India,
New Delhi.

Sir,

I present herewith the report of the Study Team which was appointed by Government in November 1969 in pursuance of the recommendations of the Public Accounts Committee, to examine the problem of leakage of foreign exchange through under-invoicing and over-invoicing. Some time back I had submitted a brief resume of our salient recommendations.

2. For purposes of this study, we interviewed a large number of persons from trade associations, chambers of commerce, export promotion councils, academic institutions, concerned Government agencies and departments, and other knowledgeable persons. A list of the individuals and bodies interviewed by us is annexed to our report. We are grateful to all of them for sparing their time to meet us and for furnishing to us readily such data and information as we required of them. In addition, we carried out commodity studies in selected areas. In all we had 66 meetings.

3. After a detailed examination of the problem, we have made various suggestions, legislative, administrative, organisational and procedural, to plug the loopholes and remedy the deficiencies noticed by us. Wherever the choice before us was between a solution that appeared theoretically perfect but not quite practicable, and another more practicable though less perfect, we have preferred the latter. It has been our aim that the tightening of the regulatory control should not hamper the smooth flow of trade, but should ensure a more expert watch over it. With this bias in favour of the practical, the implementation of our suggestions, such as are accepted by Government, should, in our view, not present great difficulty. It is, of course, evident that the problem of leakage of exchange through under-invoicing/over-invoicing cannot be tackled in isolation; for an enduring impact it needs to be accompanied by complementary measures. We have dealt with this aspect in the last chapter of our report.

4. I would like to take this opportunity to thank my colleagues on the Study Team, all of whom brought to bear upon the study of the problem their specialised knowledge and experience in their respective spheres; also great patience in discussions. Our thanks are particularly due to the Member-Secretary,

Shri R. C. Misra, whose competent assistance, coupled with his wide knowledge and grasp of the subject of our study, and deep understanding of the problems involved, has greatly facilitated the task of the Study Team. I must also specifically mention Shri L. P. Asthana, who, though not a regular member of the staff of the Team, has been closely and actively associated with the work of the Study Team throughout, and has provided valuable assistance at each stage, during internal discussions, in preparing commodity studies and finally in the drafting of the report. I would also like to place on record our appreciation of the hard work put in by the secretariat of the Study Team which included S/Shri G. N. Saxena, V. K. M. Nayak, Junior Analysts, and the Stenographers S/Shri B. R. Chhabra and I. S. Khorana who were attached to the Study Team.

5. We hope, Sir, that the results of our labours will be of some use to Government in tackling the problem of leakage of foreign exchange in the sphere which was the subject of our study.

Yours faithfully,

(Sd.) M. G. Kaul
Chairman,
Study Team on Leakage of Foreign Exchange
Through Invoice Manipulation.

CHAPTER — I

INTRODUCTORY

Appointment of the Study Team

1.1 In its 56th Report of 1968-69, the Public Accounts Committee made a recommendation for setting up a Study Team to examine the problem of leakage of foreign exchange through under-invoicing and over-invoicing. The P.A.C. observed:

> "1.55. The problem of leakage of foreign exchange through over-invoicing is an old one. The Committee observe in this regard that the Mathur Study Team on Import and Export Trade Control Organisation had, inter alia, recommended the study of the problem of over-invoicing and under-invoicing by a separate Committee. Government have stated in a written note that consequent upon the abolition of the old Export Promotion Schemes and the enforcement of a new Import policy for registered exporters with effect from August, 1966, Government felt that there was no need for the appointment of a Committee for the purpose. The Committee are left with an impression that the malpractice of over-invocing and under-invocing of exports and imports has not been effectively checked and, therefore, they feel that it would be useful if a small Study Team consisting of the officers of the relevant Ministries and of the Reserve Bank and the Central Bureau of Investigation is appointed to study the problem in all its aspects and suggest remedial measures".

1.2 In pursuance of this recommendation of the Public Accounts Committee, the Government of India in the Ministry of Finance vide their letter No. F.8/24/69-Cus.VI dated the 17th December, 1969, appointed a Study Team comprising the following:—

1. Shri M.G. Kaul, Additional Secretary, Department of Economic Affairs	- - -	Chairman
2. Shri Jasjit Singh, Joint Secretary, Department of Revenue & Insurance	- - -	Member
3. Shri M.G. Abrol, Member (Customs), Central Board of Excise & Customs	- - -	Member
4. Shri M.G. Wagh, Director of Enforment	- - -	Member
5. Shri J. Banerjee, Director (Export Assistance), Ministry of Foreign Trade	- - -	Member
6. Shri M.P. Singh, Joint Director, Central Bureau of Investigation	- - -	Member
7. Shri R.P. Chatterjee, Controller Foreign Exchange, Reserve Bank of India	- - -	Member
8. Shri R.C. Misra, Deputy Secretary, Department of Revenue & Insurance	- - -	Member Secretary.

1.3. The terms of reference of the Study Team are spelled out in this letter as follows:—

"The team will examine the problem of leakage of foreign exchange through over-invocing and under-invocing of imports and exports and will, for this purpose, locate the possible avenues now existing because of organisational deficiencies or policies of various departments, particularly, the Customs Department, Directorate of Enforcement, Reserve Bank of India and the Directorate of Export Assistance and suggest suitable changes in organisational policy and procedures. The Team will also examine the legal and administrative set up relating to imports and exports and the role of the respective agencies in implementation of the relevant procedures, for suggesting suitable remedial measures."

We have also noted, with respect, the observations of the Public Accounts Committee on this subject in its 98th Report for 1969-70 (Annexure I)

Scope of study

1.4 Leakage of foreign exchange can take place, through several sources, in a variety of ways. Having regard, however, to the observations of the Public Accounts Committee and the terms of reference, we have applied ourselves essentially to the leakage of foreign exchange occurring in the course of imports and exports of goods through trade channels. But in doing so, in order to study the problem in all its aspects, we have gone beyond the somewhat narrow concept of under-invoicing and over-invoicing and have also studied other ancillary areas of leakage of foreign exchange, relating to the import and export of goods through trade channels, such as exports by bogus parties, diversion of exports, unjustified reductions in sale realisations subsequent to export, non-repatriation or delay in repatriation of full export value, and remittances on account of goods which do not get imported at all or in place of which worthless goods are imported.

Earlier studies on the subject

1.5 The problem of manipulation of invoice values had come up for study by other groups earlier in different contexts, although not so far in sharp focus. It was studied by these groups only as part of some bigger problem. Recently the Customs Study Team, which was set up at the instance of the Administrative Reforms Department of the Ministry of Home Affairs, also, in examining the working of the Customs Department as a whole, touched upon this aspect. Subsequently, the Working Group set up by the Administrative Reforms Commission had occasion to go into this problem. The relevant recommendations of these two bodies are at Annexures II and III.

Our Approach

1.6 Our study of the problem has proceeded on the following lines. We have attempted to analyse the basic concept of under-invoicing and over-invoicing, and to trace the motivations and causes which impel a person to indulge in manipulations of the kind which are under our study. In order to set the problem in its correct perspective, we have also tried to estimate broadly the extent and magnitude of the problem. To locate the various avenues of leakage of foreign exchange through trade channels, we studied the areas particularly vulnerable to such manipulations, and the modus operandi followed by the persons involved. In the background of this examination, we have attempted to assess the working of the existing system with a view to identifying the deficiencies and lacunae -procedural, organisational, legal and others. The remedial measures which we have suggested are intended to remove these deficiencies, and plug the loopholes. Apart from changes in the organisational set up and procedures, we have also suggested measures to improve the working of the concerned agencies, namely, Customs, Reserve Bank, Enforcement Directorate and the Central Bureau of Investigation. Changes of policy and law, where necessary, have also been considered by us.

1.7 The central problem with which we have been concerned is valuation of the goods imported and exported. Checking of such values is not an easy task. A large number of commodities, with their varying qualities, brands and other differentials enter the international trade and commerce of the country. This coupled with the significant differences in the terms and conditions of individual sales, makes it difficult to determine, with any degree of certainty and precision,the value of a particular consignment of goods at a particular point of time. Fluctuating world markets, individual bargaining, competitive undercutting, long standing commercial relationships,varying business policies of different export and import houses, can result in significant differences in the prices of goods which are otherwise comparable. Further, in any exercise for checking of values, judgment has to be made to distinguish between cases of bonafide sales at low prices and those involving malafide manipulation. Our first concern, therefore, has been to strengthen the valuation machinery and improve the quality of the valuation processes.

1.8 Our approach in this regard has been two-fold: (i) to improve the quality of the valuation check, we have emphasised the need of having a higher level of expertise and a system which will keep the officers responsible for valuation checking well informed and equipped with the necessary data. This is the only way to enable the valuation machinery to make correct judgments and distinguish between bonafide and malafide transactions; (ii) since, the initial check of values in all cases cannot be thorough, we have suggested in the case of exports a post-shipment scrutiny in areas which are particularly vulnerable to invoice manipulation. For this purpose, it is necessary to have a continuous, intelligent study of the emerging patterns of trade, with a view to identifying such areas correctly.

1.9 The valuation check has, of course,to be aided by supplemental measures which would require (i) a better organised intelligence and investigation machinery; (ii) closer co-ordination among the various agencies concerned; (iii) adequate powers for collection of evidence; and (iv) condign punishment in proved cases to serve as a deterrent to others. A concerted and sustained drive against racketeers in foreign exchange and against those who secure and utilise unauthorised exchange, is also necessary to make manipulations through trade channels more difficult. In other words, the strategy to combat the menace of such manipulations has to be multipronged.

1.10 In our search for solutions, it has been our endeavour to ensure that the measures that we suggest should not have the effect of hampering bonafide trade which, in many areas, is still in the process of growing and needs to be nurtured.

CHAPTER - II

THE PROBLEM

2.1 In the present state of the country's economy, when we need to mobilise all foreign exchange and other resources to finance development, any deflection of foreign exchange from authorised channels is bound to retard the process of development, and affect adversely the national economy. Manipulation through trade channels is one of the factors that contribute to such deflection Its study presents a complex and difficult problem.

Forms of Manipulations

2.2 Leakage of foreign exchange through trade channels occurs mainly when exports are under-invoiced or imports are over-invoiced. These are discussed later in the Chapters that follow.

2.3 The opposite, namely, under-invoicing of imports and over-invoicing of exports, which also do take place, create a demand for unauthorised exchange. Prima facie, it would appear that to the country there is no loss in terms of foreign exchange when goods are under-invoiced on import. In reality, however, to the extent such goods are under-invoiced, foreign exchange has to be found by the importer from unauthorised channels to pay the differential. Apart from adding to the pressures for generating unauthorised foreign exchange, under-invoicing of imports poses a serious problem in terms of loss of customs duty. Owing to the revenue implications, the Customs authorities have been vigilant and, by and large, successful in detecting cases of under-invoicing of imports.

2.4 Over-invoicing of exports, also, does not really result in greater earning of foreign exchange as would superficially appear to be the position. In such cases, either the over-invoiced value is not repatriated or the exporter is constrained to resort to other manipulations or to buy the required foreign exchange from unauthorised sources, to make up for the differential between the correct value and over-invoiced value of the goods exported. Clearly, no overseas buyer will pay a manipulated higher price without some quid pro quo. A number of cases of over-invoicing of exports occurred prior to 1966 when certain Export Promotion Schemes were in force. Under these schemes, the import incentives were high and related to the value of the export goods; these incentives were allowed even before ensuring the repatriation of the sale proceeds of exports. Some parties obtained import licences on the basis of the over-invoiced value of the exports, but subsequently failed to repatriate the over-invoiced amount. These schemes are no longer current and under the Registered Exporters Schemes, now in force, two safeguards have been provided. In the first place, the import licences under this policy are usually issued to manufacturer exporters for those items only which are used in the manufacture of exported products; secondly, the percentages of import entitlements have been reduced to bring these in conformity with the import content in the export products. There is, however, need for a constant watch over the working of these schemes so as to apply timely correctives to ensure

that they do not at any stage develop into incentives for over-invoicing of exports.

2.5 Apart from under-invoicing of exports and over-invoicing of imports, leakage of foreign exchange can also take place through other case of manipulation in relation to imports and exports. For instance, in case of imports, while the value may be correct for the goods as shown in the documents, fraud may be perpetrated by bringing in worthless goods under those documents; alternatively remittances may be made against forged import licences or against licenses obtained fraudulently on misrepresentation. Similarly, on the export side, exports may be made under fictitious names, rendering it impossible to ensure the repatriation of the sale proceeds. By another variation, export goods at the time of passing through Customs may be correctly invoiced, but reductions in value may be sought subsequently on false pretexts. Deliberate delay in repatriation of sale proceeds of otherwise correctly invoiced export goods may enable the exporter to retain funds abroad without authority over a period of time. Another important area, which is discussed in Chapter X, is the unauthorised diversion to the general currency area of the export goods which are initially consigned to rupee payment countries. Apart from the loss of free foreign exchange by such diversion, it depresses the unit value and adverseiy affects the prospects of our direct exports tc the general currency area. The problem of leakage of foreign exchange through manipulation of documents has therefore to be viewed in its totality.

What constitutes under-invoicing/over-invoicing?

2.6 The expression "under-invoicing" or "over-invoicing" could connote two different concepts:—

(i) Invoicing of goods at a price less or more than the price for which they were actually sold or purchased; and

(ii) Invoicing of goods at a price which represents the actual sale or purchase price but which is iess than the best bargain that could be struck or the best return that could be obtained in comparable circumstances.

The former represents a collusive transaction whére the Indian exporter or importer retains the differentiai abroad for his own use or for sale through iilegal channels at unofficiai rates of exchange. The latter represents a category of transactions in which no gain accrues to the individuai importer or exporter in terms of foreign exchange. An Indian exporter may strike a deal for his goods at a price lower than the best obtainable for various commercial considerations such as a iong range marketing poiicy, iower cost of production, and better competitive position. Sometimes, such a transaction may be due to his ignorance or poor business acumen. The normal assumption, however, wouid be that save in the case of collusive transactions of the category referred to in (i) above, every exporter, in his own interest, tries to obtain the best possible price for his goods on export. In our view, from the foreign exchange angle, and from the point of view of our study only cases

covered by category (i) above would really be those of under-invoicing and over-invoicing and category (ii) refers to what we may call under-selling as distinct from under-invoicing. The various agencies dealing with valuation check, such as Customs, Reserve Bank and Enforcement Directorate, would be concerned only with cases of under-invoicing and not with those of under-selling. In fact, it would be difficult for an appraising officer to arbitrarily raise the invoice value to a theoretical figure intended to represent the best obtainable price, if he is otherwise satisfied that the invoice value represents the actual sale price of the goods. Apart from the administrative difficulties involved in determining the 'best obtainable price' on the facts of a particular transaction, legally also, penalising a person on the basis of such a subjective criterion would not be sustainable. Under-selling and the problems it poses have to be tackled by suitable changes in policy and not by enforcement action. For instance, in regard to some particular commodities where inter-se undercutting among the Indian exporters has the effect of lowering our export prices, and where higher prices could be obtained, the Government have already been taking corrective action by fixing floor prices. The distinction between under-invoicing and under-selling is well recognised; and for the purpose of this study, we shall be concerned primarily with the former.

Motivations and causes

2.7 There could be various motives which impel a person to resort to manipulations in imports and exports through trade channels. We attempt here to list the important ones. Some people indulge in this because they want foreign exchange for their own use abroad for purposes for which exchange may not be released easily, or at all, by the authorities. For instance, with the growing prosperity, there is greater urge for foreign travel, but exchange is not always sanctioned for such travel, or the amount sanctioned is regarded as insufficient. Even for trips on business, the exchange sanctioned may not be as much as many businessmen want to have. Others resort to these malpractices because they have to settle some small claims quickly, or import urgently needed spare parts or raw materials and they think that getting exchange through regular channels may be a time consuming process. Some firms may require foreign exchange for the purpose of meeting expenses of the agencies or offices set up abroad unauthorisedly without the permission of the Reserve Bank. For all such purposes, a person might acquire foreign exchange from illegal channels, and he finds the easiest way to generate this foreign exchange through the import and export of his own goods.

2.8 Persons who are both in the import and export business may resort to malpractice in one for the purpose of indulging in the other. For instance, a trader may under-invoice his exports for the purpose of enabling him to under-invoice his imports; the foreign exchange generated by under-invoicing of exports would be utilised for meeting the differential between the correct value and the invoiced value of the imported goods. Likewise, he may over-invoice his imports to enable him to over-invoice his exports. Where the floor prices of export goods are fixed at an unrealistic level, he might resort to any of these malpractices to cover the gap between the fixed floor price and actual sale price. Such manipulations may also be carried out to accommodate the foreign buyer. We were informed by certain witnesses that Indian exporters are at times constrained to manipulate the invoice values at the instance of foreign buyers who insist on it to save the customs duty that may be leviable on such

goods in that country, or to evade other restrictions in force there. We gathered the impression that such a practice was peculiar to certain regions, and was not indulged in on a large scale.

2.9 Anyone, who is interested in transferring his assets from India to some other country clandestinely, can also adopt these methods for secreting foreign exchange abroad. The motivation may be to create hidden investments abroad or accumulation of foreign exchange abroad for use in unforeseen contingencies. It was represented to us that the incidence of taxation in India is high and that this also encourages the flight of the capital and transfer of assets from the country. The desire to evade taxes may be one of the factors for resorting to these manipulations.

2.10 As somewhat distinct from the above, there are persons who take to these manipulations purely for profit. They secrete foreign exchange for the purpose of selling it through unauthorised channels at rates higher than the official rates of exchange. So long as there is scarcity of foreign exchange, and it has to be rationed according to priorities, a gap is bound to exist between the official and the black market rates of exchange, and there will be persons who will attempt to exploit this gap. The size of this gap, however, is always relevant. If the gap is large, the temptation and the effort to siphon exchange to unauthorised channels will be greater. The size of the gap is in turn inextricably linked up with the factors that create demand for unauthorised exchange. One of the important factors creating such demand is smuggling. Smuggling cannot be financed except by unauthorised foreign exchange or smuggling out from India. Apart from smuggling, the demand for unauthorised exchange in the main is created by (i) under-invoicing of imports, (ii) over-invoicing of exports, (iii)foreign travel, (iv) expenses of offices abroad, and (v) adjustment of claims of buyers or agents abroad.

The leakage of foreign exchange caused through manipulation in trade channels being one of several sources of supply of illegal exchange, all factors which create or increase the demand for unauthorised exchange, contribute towards encouraging such manipulations.

Magnitude of the problem

2.11 If it were possible to estimate the extent and magnitude of under-invoicing and over-invoicing and leakage of foreign exchange through such manipulations, it would help to set the problem in its correct perspective, and to look for solutions which do not either entail an excessive regimentation or leave the door too wide open. However, in the nature of things, reliable data as to the precise extent of over-invoicing and under-invoicing or of leakage of foreign exchange through trade manipulations is difficult to come by.

Different views regarding the extent of leakage.

2.12 We have examined the available data of cases of under-invoicing of exports and over-invoicing of imports detected by various enforcement agencies over the course of last ten years. It was found that such cases constitute even less than a quarter of one per cent of our total exports and imports. It is, however, not seriously contended by anybody that the extent of under-invoicing and over-invoicing is only of this order. Most of the persons who appeared before us were of the view that the number of detected cases did not

provide any proper indication of the actual magnitude of the problem, since a large proportion of the cases of invoice manipulation remain undetected. Further, quite understandably, appraising officers do not pursue marginal cases, where there is no reasonable prospect of legally establishing the under-invoicing/ over-invoicing.

2.13 None of the persons from the trade or Government agencies who appeared before us found themselves in a position to give any firm estimate of the magnitude of the problem. Broadly, the view expressed by the trade was that the size of the problem, or the quantum of leakage of foreign exchange through under-invoicing and over-invoicing and other manipulations, was not substantial. Some representatives from the trade even urged that in respect of the commodities with which they were concerned, there was no scope for manipulation at all. Government enforcement agencies did not share the view expressed by the trade, and felt that the leakage through such manipulation was not so small.

Our assessment.

2.14 In the nature of things, there can be no firm or verifiable data for determining the extent of leakage of foreign exchange through manipulations in trade channels. We have, consequently, been rather reluctant to venture into making an estimate which, owing to the inadequacy of supporting statistical data of a verifiable nature, can at best only be very broad and rough in character. Numerous imponderables and assumptions are bound to enter any such estimate. In spite of this, two considerations have weighed with us in attempting this exercise, firstly, there is a lot of loose thinking on the subject, and a tendency either to under-estimate grossly or exaggerate substantially the extent of leakage; secondly, for setting the problem in correct perspective with a view to finding solutions, it is necessary to have some idea, even though very broad, of the magnitude of this leakage.

Estimate from a study of commodities.

2.15 For this purpose, the method that we have followed is to make a study of each major export commodity, and of the vulnerable sectors of the import trade, then form an estimate of the scope for manipulation with respect to each such commodity or sector. From this manner of calculation we have made an overall assessment of the possible leakage of foreign exchange through under-invoicing, over-invoicing and other manipulations. We have also tried, to the extent possible, to cross-check the conclusion reached by this commodity by commodity method, by analysing the demand for unauthorised foreign exchange, and relating it to the different sources of supply of such exchange. The entire exercise, we wish to emphasise, is beset with several imponderables and rough assumptions.

Leakage through under-invoicing of exports.

2.16 During the year 1969-70, our total exports were of the order of Rs. 1,413.21 crores. Out of these, exports to the rupee payment countries were of the order of Rs. 307.45 crores. In addition, public sector undertakings effected exports worth Rs. 171 crores to countries other than rupee payment countries. Both these kinds of exports would generally not be susceptible to invoice manipulation. Excluding these, the remaining exports would be worth Rs. 1,034.76 crores, comprising mainly jute, tea, leather and hides and skins. cotton and silk textiles, oil cakes, diamonds and precious stones, cashew kernels, tobacco, spices, coffee, machinery and appli-

ances, transport equipment, marine products, chemical and allied products, mineral ores, shellac, mica, iron and steel products, and handicrafts. In Chapter III, we have discussed the vulnerability of these commodities to invoice manipulation.

2.17 We would wish to state here that it cannot be assumed that every exporter resorts to under-invoicing of his exports. Most perhaps do not. Further, many of these commodities carry incentives which are related to the value of the goods exported which should normally counter the temptation to under-invoice them. Thirdly, in respect of some traditional commodities, though the scope for manipulation exists on account of long established relationships between the Indian exporters and the foreign buyers, the possible range for such manipulation is limited, since their markets are comparatively well organised and either regular price quotations are available or the sales are by auction. In respect of commodities where there is no standardisation of quality, or for which there are no regular market quotations, the range of manipulation is likely to be wider. It would thus appear that the range of manipulation would differ from commodity to commodity. We have taken into account all these considerations and have come to the conclusion that the under-invoicing of exports in a year is probably in the region of Rs.40 to Rs.50 crores.

Leakage through over-invoicing of imports.

2.18 The main items which are susceptible to over-invoicing of imports are capital goods, heavy electrical plants and other machinery, hides and skins, books, raw cashew, wattle extract and some dyeing and tanning substances. During 1969-70, import licences of the value of about Rs.70 crores were issued for capital goods. Of these, about 30% of the licences were on Government account, and 70% were issued to private importers. Licences of the order of Rs.3 crores were issued for heavy electrical plants, most of which were on Government account. In capital goods, there is considerable scope for over-invoicing on import. Some other items of machinery are also susceptible to over-invoicing. As regards the remaining categories of goods whose imports during 1969-70 were of the order of Rs.40 to Rs.45 crores, save for cashew, the import of which has recently been entrusted to a Corporation, there is scope for over-invoicing. Having regard to the commodities which lend themselves to over-invoicing, and the scope for over-valuation in these commodities, the leakage of foreign exchange through over-invoicing of imports is not, in our view, likely to exceed Rs.10 to Rs.15 crores in a year.

Leakage through other forms of manipulations.

2.19 To these figures, we must add the possible leakage through other kinds of manipulation, such as remittances against forged licences, or against import of worthless goods, or exports in fictitious names. This is an area where we have to go entirely by guess work based on general experience. We would estimate that leakage of exchange through these kinds of manipulation could be in the region of Rs.5 crores in a year.

Total leakage through manipulation in trade channels.

2.20 The overall picture that emerges from this exercise is that the leakage of foreign exchange due to under-invoicing of exports, over-invoicing of imports, and other manipulations through trade channels would at present be roughly of the order of Rs.50 to Rs.70 crores in a year. This, as we

stated earlier, is a subjective assessment of the magnitude; we feel it is not too widely off the mark. We have tried to cross-check this estimate by another method to the extent this is possible. This is described in the subsequent paragraphs.

Estimate of exchange required to finance smuggling.

2.21 It is common knowledge that the bulk of the gold and most of the other commodities which are smuggled into India pass through some of the Gulf States. It is not difficult to ascertain broadly the volume of imports of such goods into those States. However, some of these goods would find their way into countries other than India. One set of firm data available are the figures of Customs seizures. These include value of seizures on import, seizures on export and the value of the seized vehicles which are used for smuggling. In the year 1969, the value of smuggled imported goods seized by the Customs authorities was Rs. 22.08 crores. The value of the gold included in this figure was at the international rate, while the values of the remaining goods like watches, synthetic yarn and fabrics and other articles were in terms of their market price in India. That smuggling persists would indicate that it continues to be profitable. Evidently the seizures by the Customs authorities would constitute a small percentage of the total smuggling. We have taken all these factors into consideration and our view is that the consumption of illegal foreign exchange to finance smuggling would be of the order of Rs. 160 to Rs. 170 crores. This figure would of course fluctuate from year to year.

For foreign travel

2.22 Besides smuggling, there are other important areas of utilisation of unauthorised foreign exchange, of which foreign travel is one. Certain categories of travellers such as those going for employment abroad, medical treatment, study tours, attending conferences, or to join their families, would not normally be drawing upon unauthorised sources for procuring exchange. But some of the others might be taking recourse to unauthorised channels for supply of foreign exchange to finance their expenses and for purchases abroad. Having regard to the number of persons going abroad to whom no foreign exchange is sanctioned, and the requirements of those categories of persons who might be resorting to unauthorised channels for supply of foreign exchange, we feel that the total demand for unauthorised exchange for foreign travel could be in the region of Rs. 35 to Rs. 40 crores.

Financing of other demands for unauthorised exchange.

2.23 As regards the financing of the under-invoicing of imports, we have to take note of the fact that in this sphere, though in view of the restrictive import policy for most of the commodities, and the high incidence of customs duty, the temptation to under-invoice imports continues, owing to the Customs vigilance because of the revenue implications, the undetected area may not be very large. As for the over-invoicing of exports, this has become practically insignificant due to the withdrawal of the erstwhile export promotion schemes. To this we have also to add the demand of persons who desire to build up reserves abroad for various reasons. In our view, the demand for foreign exchange for under-invoicing of imports, over-invoicing of exports and building up reserves abroad, taken together, would not be more than Rs. 25 to Rs. 30 crores in a year.

Estimate of the total consumption of unauthorised foreign exchange.

2.24 On an overall view, the total consumption of unauthorised foreign exchange for various purposes in a year would appear to be of the order of Rs. 240 crores or thereabout, the various consituents being smuggling (Rs. 160 to Rs. 170 crores), travel(Rs. 35 to Rs. 40 crores), and nest-eggs abroad and financing of under-invoicing of imports and over-invoicing of exports (Rs. 25 to Rs. 30 crores).

Illegal sources of supply of foreign exchange.

2.25 This demand for unauthorised foreign exchange is met from four main sources, namely:

(i) Sale proceeds of goods smuggled out of India, like silver, narcotics, precious stones, antiques;

(ii) Deflection of inward remittances to unauthorised channels;

(iii) Foreign currency obtained unauthorisedly from foreign tourists coming to India; and

(iv) Manipulations through trade channels in relation to imports and exports.

Smuggling, it is our general view, is largely financed by the foreign exchange generated from the first three sources, the reason being that manipulation through trade channels is a somewhat complicated process and smugglers generally resort to sources from which it is easier to obtain a regular supply of unauthorised foreign exchange. The traders who resort to these malpractices, it is our feeling, do so mainly for generating foreign exchange for their own use and for building up reserves abroad. Incidentally, in a particular case where the accounts of a big organised foreign exchange racketeer were seized by an enforcement agency, it was found that of the illegal foreign exchange handled by him, only about 5% or so emanated from manipulations in trade channels, while the major portion came from deflection of inward remittances.

Outward smuggling of silver and other commodities.

2.26 In the year 1968, the value of silver seized on export by Customs was Rs. 4.43 crores. In 1969, the silver seized was of the value of Rs. 94 lakhs only. This fall in the figures of seizures of silver indicates essentially a decrease in the smuggling out of silver after the Customs (Amendment) Ordinance was promulgated at the beginning of 1969. This is also substantiated by the figures of imports into U.K. of the refinable silver, as indicated in the London Bullion Dealers' Annual Review. It is believed that most of the silver imported into U.K. through the Gulf States was from India and Pakistan. Besides silver, other commodities known to be smuggled out of India are: narcotics, precious stones, antiques and sundry goods. Owing to the strict control over narcotics in India, the volume of narcotics smuggled out is not large, but because of the very wide difference in domestic and international prices, even the small quantity smuggled out would generate a substantial amount of foreign exchange. Of late, a number of cases of illegal export of antiques has been detected. Similarly, there have been cases of smuggling out of precious stones. In our view the supply of illegal exchange through outward smuggling of various commodities in a year would be in the region of Rs. 40 to Rs. 45 crores.

Leakage through foreign tourists.

2.27 As to the leakage of exchange through foreign tourists coming into India, certain responsible quarters are understood to have come to an estimate that in the year 1967 when the number of tourists visiting the country was 1,80,000 the leakage from this source was of the order of Rs. 10 crores. The tourists' traffic has since gone up; and in 1969, the number of tourists who visited the country was 2,45,000. Proportionately during the year 1969, the supply of unauthorised foreign exchange through this source could be of the order of Rs. 15 crores.

Deflection of inward remittances.

2.28 We feel that more than 70% of smuggling is financed by foreign exchange generated by deflection of inward remittances into unauthorised channels. There is considerable difference between the official exchange rate of the rupee and the black market rate. With such a high incentive, the extent of deflection of inward remittances into unauthorised channels is bound to be large. Having regard to these, and taking into consideration the level of legal inward remittances on private account, which were Rs. 144 crores in 1968-69, our estimate is that the leakage of foreign exchange through this source in a year is not less than Rs. 100 to Rs. 120 crores. The foreign exchange enforcement agencies have independently arrived at the same estimate.

Total leakage through manipulation in trade channels.

2.29 Against the total demand for unauthorised foreign exchange estimated at about Rs. 240 crores in paragraph 2.24, the supply of such exchange through the sources discussed in paragraphs 2.25 to 2.28 amounts to about Rs. 170 crores to Rs. 180 crores. This would leave a gap of about Rs. 60 crores to Rs. 70 crores which could be attributed to under-invoicing of exports, over-invoicing of imports and other manipulations through trade channels. This, more or less, conforms to the estimate which has been arrived at by a different method earlier. This at best is a very rough estimate or an educated guess. It is not a conjecture, but it would be impossible to substantiate it by arithmatical calculation. It is also not in any sense an official estimate of the Government. We have attempted it because of a considerable demand for a quantification of the magnitudes of trade channel leakages of foreign exchange. We should add that our calculations, if they can be called that, have reference to a particular year, namely 1969-70. Even the broad magnitude would vary from year to year.

CHAPTER–III

AREAS VULNERABLE TO MANIPULATION

Closer check in selected areas.

3.1 Values of all goods imported or exported are checked by the Customs authorities at the stage of import or export and subsequently in some situations by the Reserve Bank. In order to make this check more effective, it is essential that the scrutiny should be closer in those areas where the scope or the possibility for manipulation is greater. For the purpose of identifying such areas, systematic and continuous study is called for.

Criteria for judging vulnerability.

3.2 Areas,where a closer check is necessary, can be identified with regard to three broad criteria: (i) the nature of relationship between the importer or exporter in India and his counterpart abroad; (ii) pattern of trade and nature of transaction; and (iii) the kind of product. It must, in addition, however, be mentioned that every area where Customs or Reserve Bank do not have adequate means or expertise to check the values is vulnerable to manipulation, since the lesser the chances of detection, the greater are the temptation and the scope for manipulation.

Combination of factors.

3.3 In judging vulnerability, it is not any one factor in isolation that matters; the pulls and counter-pulls of various factors have to be weighed. For instance, in the case of export of engineering goods, for lack of comparative values, the valuation check is difficult and this should mean the scope for manipulation is greater. But since in this field contacts between the Indian exporters and the overseas importers are new, the opportunities for such manipulation are consequently less. Further, since the grant of licences for replenishment of imported raw materials is related to export values, there is another disincentive. To take a further example, in the case of traditional commodities, long established contacts and high fluctuations in price make manipulation easier. There are, however, other limitations. The prices of such commodities are better known to the Customs and, therefore, any wide variation is likely to attract their notice. Advance registration of contracts and auction sales also provide some safeguard against such manipulation.

NATURE OF RELATIONSHIP

Parties closely associated over a period of time.

3.4 Transactions between parties closely associated over a period of time or financially linked with each other could be vulnerable to manipulations. In the first of these two categories, the Indian exporter or importer and his counterpart abroad, due to their long standing business relationship, develop close links and they are in a position to repose confidence in each other, and arrive at secret understandings. Contacts are obviously of longer duration in the case of traditional commodities. But it would, of course, be wrong to assume that just because there are long established connections, the values are necessarily manipulated. In fact, many of the exporters or importers dealing in traditional commodities are established traders of repute, and basically honest. But there are always some who are tempted to exploit these connections for the purpose of manipulation. Import

or export transactions between such parties need to be scrutinised more closely to ensure that the values are not unduly low as compared to the values at which goods of like kind and quality are sold or offered for sale in the course of international trade.

Same party operating at both ends.

3.5 Manipulations are easier where the exporter and the importer are in reality one and the same party operating at two different places under different names. In the normal course, it is difficult to detect that the same party is operating at two different places since generally there would be nothing to indicate this in the relevant documents. Apart from a careful scrutiny of various documents, and a comparison of values which might throw up clues regarding the real state of affairs, and form the basis for further probe, the concerned agencies must rely here on systematic collection of intelligence for tackling such situations.

Financial Link and Technical Collaboration.

3.6 The parties may be financially related in two ways: (i) the importer or exporter may be a subsidiary or a branch of his overseas trading partner or vice-versa or there may be some other financial link between them; or (ii) the importer and exporter, though not directly related, may be controlled by one parent organisation which has a shareholding in both, or the shareholding may be interlocked in different organizations providing an indirect link. Where parties have a financial interest in each other, both benefit by the manipulation, and the secretion of foreign exchange abroad is easier. Such parties are also in a position to cover the under-invoicing by indicating sale at a concessional price. While the channels established with parties abroad are helpful for trade expansion, at the same time transactions between parties financially linked need specialised examination. In Chapter V we are suggesting that on the pattern of the special valuation section on the import side, there should be a special valuation unit on the export side also which could make a detailed examination of the books of accounts of the Indian exporters having financial links abroad, and give suitable advice to the appraising officers with regard to acceptability or otherwise of their invoice values. Again, in cases of technical collaboration between the importer and exporter, there may be scope for adjustments of underinvoiced or overinvoiced amounts against payments of royalties if these have not been fixed at a realistic level. The technical collaboration agreements are examined by Department of Economic Affairs and the rate of royalty is approved by that Department. Apart from the need for exercise of great care by that Department in approving the rates of royalties, the imports and exports between collaborators should be examined with particular care to be sure that the values are comparable with those of other exporters and importers, and a part of the consideration for the goods is not being adjusted against payment of royalties.

Imports or exports through buying or selling agents.

3.7 Imports or exports effected through agents abroad also need particular attention. Firstly, such agents, according to normal practice, are paid a commission. Any manipulation with regard to the rate of commission has a long range effect and, over a period, could lead to a substantial loss of foreign exchange. Secondly, the agent can be expected to be willing to oblige his principal and would be in a position to help the

Indian exporter/importer in manipulating the invoice values. Thirdly, the commission is sometimes shown as a straight deduction in an invoice, and at other times permission of the Reserve Bank of India is sought for making separate remittances towards payment of the commission. In this arrangement, there is a possibility of the commission getting paid twice. The responsibility for allowing the commission and determining its reasonableness is that of the Reserve Bank. The rates of commission vary from commodity to commodity, and from country to country. It is necessary that the Reserve Bank should have adequate expertise and a thorough knowledge of the international practices with regard to the rates of commission which are normally allowed for different commodities under different arrangements in various countries. For this purpose, there has to be a better inflow of information from abroad, for which we are making certain suggestions in Chapter VI. Such information would come to the Special Valuation Cell of the Customs Department, and should be shared with the Reserve Bank of India. This is apart from any information that the Reserve Bank of India itself builds up. There would be need for closer co-ordination on this between the Customs Department and the Reserve Bank of India. Further, the Customs authorities will also be exercising an indirect check on the reasonableness of the rate of the agency commission when comparing the net realisations (gross price minus agency commission) with the values at which other exporters made the exports of comparable goods without going through a buying or selling agent.

PATTERN OF TRADE AND NATURE OF TRANSACTIONS

Question of profitability.

3.8 Any study of the possible areas which are particularly vulnerable to invoice manipulation would essentially require, among other things, a study of the incentives and disincentives which the manipulator would normally take into account before attempting invoice manipulation. Basically his motive being that of gain, if the profit accruing as a result of manipulation is greater than the loss flowing from such manipulation, the chances of values being manipulated exist. To be more specific, an importer before overinvoicing his imports will necessarily take into account the loss of premium on the import licence to the extent it is being wasted due to overinvoicing, and the extra duty which he may be required to pay on the overinvoiced amount as against his gains on such manipulation. For example, there is at present hardly any chance of products like, cloves, stainless steel, synthetic yarn and electrical appliances, which carry a very high margin of profit on sale in India being overinvoiced. Conversely, there could be incentive for overinvoicing of imports of items like hides and skins (undressed), cashew (raw), books and capital equipment. Similarly, on the export side, in the export commodities to which the import replenishment schemes applies, there is a positive disincentive against under invoicing. By underinvoicing such a product, the exporter deprives himself of several benefits; (i) raw material for his industry; (ii) benefit of the cheaper rates at which he gets the imported raw material; and (iii) import licences for capital plant and machinery. These benefits may not be capable of being converted into precise mathematical figures, but they do influence the person who is contemplating underinvoicing of his exports. At times, the benefits

from the exports may, as a whole, be greater than the difference between the authorised and unauthorised rates of exchange, which may even provide a motive for overinvoicing his exports. The increase or decrease in income-tax liability will be another factor to be taken into account. We, therefore, think that for ascertaining the possible areas of invoice manipulation, the officers checking the values of the goods will need to look into various factors, such as the margin of profit on the commodities in India, the licence premium, the import licensing policy, the incidence of duty in India and abroad, the benefits available under the policy for registered exporters, amount of tax which can be evaded due to manipulation and then determine, on an overall assessment, whether there was scope for manipulation or not. Such an exercise would need to be a continuous process, Apart from the motive of gain, there may be other considerations for which a person may like to secrete foreign exchange abroad. But those are individual motivations and will have to be dealt with on the basis of intelligence and information.

Sale on consignment account.

3.9 Some transactions, by their very nature, are capable of being exploited for the purpose of invoice manipulation. One such area is that of exports on consignment account, or on approval basis. In such cases, the exporter is required to indicate at the time of export only the expected sale value of the goods. Subsequently on sale of the goods abroad, he renders an account of the sale proceeds to the Reserve Bank. Since the sale transactions take place abroad, the scope for manipulation is obvious. By and large, the authorities go by the account sales furnished by the exporters. There could be considerable room for manipulation in these account sales. This is, therefore, another area which requires to be watched carefully. In Chapters V and VI we are suggesting measures for a better inflow of information from abroad for valuation purposes and for improving the check on the final sale values in consignment exports.

Manipulation of quality analysis and weighment results.

3.10 Cases of invoice manipulation have also been noticed in exports covered by outright sales where, in terms of the contract, the final settlement of price is dependent on quality analysis, weighment or other similar factors which are to be determined abroad. Contracts relating to sale of iron ore, manganese ore and other ores, usually contain such terms. Even a small manipulation in any of these factors affects the price of the goods, and if resorted to over a period of time, the loss in terms of foreign exchange could be sizable. In all such cases, it is necessary that the terms of the contract are carefully examined, and the trend of the analysis results (pre-shipment and post-shipment) systematically studied with a view to finding out whether the results are manipulated or not. In doubtful cases, results of analysis at the mines should also be scrutinized. It would be relevant to mention that any manipulation of this type is likely to have some method in it, and if the results are carefully scrutinised, it should be possible to discover this.

Transactions involving collateral obligations.

3.11 Some manipulated transactions involve collateral obligations between the importer and the exporter, and these obligations have an indirect bearing on the price of the goods. The collateral obligations may relate to past transactions, or to adjustments with regard to claims, or may have reference to some secret understanding between the parties in respect of a totally

different transaction. There have, for instance, been cases of exporters who paid for some imported goods by underinvoicing their exports. It is necessary that the appraising officers examine the various terms and stipulations in the contract closely, with a view to assessing their impact on the values of the goods, and get an idea of the net and final consideration for which the goods have been sold. Since, in a majority of cases, the collateral obligations are not explicit in the contract, comparison with the values at which other imports or exports of such goods have been made would also be necessary.

Over-pricing.

3.12 Transactions involving payment of 'overprice' represent another area where there is scope for manipulation. The term 'overpricing' is used in commercial parlance in a specific sense. Payment of overprice arises in those cases where the first buyer of the goods abroad wants the Indian exporter to make out documents in favour of a second buyer, namely, the one to whom the first buyer has agreed to sell the goods. The documents are made out in the name of the second buyer at the price at which the first buyer has agreed to sell the goods to the second buyer. The object of a transaction conducted in this manner is two-fold; (i) the first buyer escapes the botheration and expenses involved in his taking delivery of the goods and then supplying those to the second buyer; and (ii) he does not want the second buyer to know the price at which he has purchased the goods from the Indian exporter. To give an example of overpricing, exporter 'A' enters into a contract with a buyer abroad 'B', for supply of his goods at Rs.100/-. 'B' is the first buyer. 'B' in turn agrees to sell the goods to another buyer 'C' at Rs.110/-. We may refer to 'C' as the second buyer. Rs.10/- represents the margin for 'B'. Here two sales are involved and, in the normal course, 'A' would have made out the documents in favour of 'B' at Rs.100/- and 'B' thereafter would make out documents in favour of 'C' at Rs.110/-. But in a case of over-pricing, on the direction of 'B', 'A' makes out documents directly in favour of 'C' at the price of Rs.110/-. After 'A' has realised Rs.110/- from 'C', he sends a remittance of Rs.10/- to 'B'. In this method, Rs.10/- is called the 'over-price'. 'Over-price' is the profit which 'B' has made in purchasing the goods from 'A' and in selling these to 'C'. The remittance of this 'over-price' is made by the Indian exporter with the permission of the Reserve Bank. If it is a genuine case of overpricing, no exception can be taken. But this method of invoicing is capable of abuse. For instance, even in a case where 'A' has sold the goods directly to 'C', he might in guise of 'over-pricing', send some remittance abroad to his account by inducting his own man as 'B'. In other words, in all such cases, the question for consideration is whether it is really one sale or two sales, and further whether the intermediary 'B' is really an independent party, and not put up by 'A'. It is necessary, while permitting a remittance on account of overprice, to ensure that it is a genuine case of overpricing. At the stage of initial scrutiny of the GR form, the Customs should also ensure that the net realisation, after deduction of overprice, represents the 'full export value' of the goods.

Other deductions.

3.13 This kind of manipulation also exists with regard to claims, such as claims relating to quality or late shipment, or other deductions from

invoice value, such as, discounts, rebates, or post-export deductions. Therefore, the transactions where the sale price is subject to certain deductions in any form or the other would require careful examination.

Back to Back contracts.

3.14 When a commodity is canalised for import or export through a public sector undertaking, generally, during the initial stages, the canalisation is only in name. In practice, the private exporter or importer negotiates the deal and arranges for the actual export or import though the contract with the foreign buyer or supplier is made in the name of the public sector undertaking. Since the transaction is in the name of such an undertaking, the Customs authorities are prone to be complacent, and disinclined to question the declared value. Thus, this stage of canalisation may provide a cover to the actual exporter or importer, who may be under-invoicing /over-invoicing the goods.

Imports made under Letters of Authority or on fixed-margin basis.

3.15 Somewhat allied to the above is the area where the local agent of a foreign supplier, or any other party, imports goods under a letter of authority issued in his favour against an import licence of a Government department, or a public undertaking. Many a times, either because the goods cannot be procured from the foreign supplier except through his local agent, or because of lack of know-how, or because it is otherwise convenient so to do, the Government departments or public undertakings do not themselves import goods against their licences and, for this purpose, take the help of private agencies, such as the local agent of a foreign supplier or an indenting agent. In such cases, the Import Trade Control Authorities issue letters of authority in the name of these agencies, who actually import the goods. Since such agencies get their fixed margins in the deals and have no stake in the utilisation of the import licences, there could be a temptation to overinvoice such imports and, therefore, these need to be looked into more carefully.

Switch trade.

3.16 Our trade with East European countries suffers from another kind of manipulation. Some part of the goods exported to these countries under bilateral rupee-payment agreements are diverted to West European countries, and the U.K. This type of diversion is disadvantageous to India in two respects. Firstly, it has the effect of reducing our market in the free foreign exchange area to the extent of the diversion. Secondly, it also tends to depress the export value of our direct exports to the general currency areas. It is gathered that such diverted goods are under-sold in the West European countries and U.K.; and the importer in East European countries in turn over-invoices his goods supplied to India. From this point of view our imports and exports to East European countries require a special watch. We are not aware of the extent of such diversion, and believe some countries in Eastern Europe scrupulously refrain from indulging in the practice. However, it needs further study.

Imports on AID account.

3.17 Imports against licences issued under aid loans may be over-invoiced in the sense that the importer has to pay more for the goods because of the restrictions placed on him with regard to the overseas market from which he could procure the goods, aid being tied. But this type of over-invoicing

does not involve any kind of manipulation or fraud on the part of the Indian importer. Its relevance here is to this extent that the importer pays a price higher than the international market rate for those goods. With the gradual untying of aid, this will decrease.

Trade with countries with liberal currency and import controls.

3.18 Trade with countries where there are no currency restrictions or exchange control is not strict, is more susceptible to invoice manipulations since there are no impediments to such manipulations in the procedures of those countries. Trade transactions with such countries also need to be watched carefuliy.

Manipulations for the benefit of officials of undertaking and companies.

3.19 In the preceding paras we have outlined the general areas which are vulnerable from the point of view of invoice manipulation. It must not be forgotten, however, that there is always the danger for high-level personnel in public undertakings or large public limited companies to under-invoice and over-invoice goods for personal gain. Here, the cost involved has to be borne by the organisation and the profit accrues to that individual. The temptation is therefore great.

KIND OF PRODUCT:

3.20 While manipulation may be theoretically possible in respect of all commodities, obviously because the majority of people concerned are honest and because of the difficulties involved and the other counterpulls and disincentives, it does not universally exist. Some commodities are, however, more vulnerable than others to such manipulations, either because of the conditions of trade existing in those commodities, or the trading pattern followed with regard to their import or export, or due to financial ties or long standing business relationships between the importers or exporters of such commodities, or owing to difficulties of valuation such as inadequacy of expertise or absence of regular flow of necessary information regarding values of such goods, or difficulties of valuation inherent in the nature of the product such as its unique features and noncomparability with other goods. These are some of the considerations, which have to be kept in view for the purpose of ascertaining the degree to which the major commodities exported and imported are vulnerable to invoice manipulation. In the field of exports, we try in succeeding paragraphs to assess the susceptibility to undervaluation of the major commodities exported. In imports, since the scope of over-invoicing is rather limited, we have confined ourselves to those commodities which are vulnerable to over-invoicing of imports.

Vulnerability to under-invoicing of exports.

3.21 Our total exports during the year 1969-70 were of the order of Rs.1,413.21 crores. We are attempting below a description of the main features of the trade in various important commodities in an effort to assess their vulnerability to under-invoicing.

3.22 JUTE MANUFACTURES — The exports of jute goods during the year 1969-70 were of the order of Rs.206.25 crores (approximately 14.5% of the total exports). More than 55% of these exports were to U.S.A. The

main items exported were carpet backing cloth, (Rs.101.16 crores); other hessian cloth (74.74 crores), hessian bags (Rs.17.27 crores), sacking bags (Rs. 9.81 crores), jute baggings for raw cotton (Rs.5.46 crores), tarpaulins of jute (Rs.1.67 crores) and sacking cloth (Rs.1.11 crores).

3.23 There are two kinds of exporters in jute trade. There are mills who have their own exporting houses or export/shipping departments, and there are a number of merchant exporters, who buy jute goods from the mills and export them. Most of the business in jute exports takes place through their overseas associates, and their existence is a material factor to be kept in view while examining the problem of under-invoicing in jute exports. Some of these associates are either subsidiaries or principals of Indian exporters, some are agents, and some others are independent business houses who have long standing business relationship with the Indian exporters.

3.24 A characteristic feature of the jute trade is that most of the transactions are made on forward delivery basis. The prices differ depending on the delivery schedule. For standard jute goods, the leading brokers of the Calcutta market publish market quotations daily. The two standard sizes which form the basis of valuation for other constructions also are 40"-7½ oz. and 40"-10 oz. The prices for other standard constructions of jute goods can be determined by making allowance for the premia/discounts/differentials which are also quoted in the market. The brokers also publish daily market quotations for B. Twills, Corn Sacks, L. Twills, A. Twills, and D.W. Flours. There are, however, no regular quotations for carpet backing, cotton bagging or jute specialities. For carpet backing, the Indian Jute Mills Association, in consultation with the Jute Commissioner have fixed minimum export prices for standard sizes of carpet backing cloth. For other sizes of carpet backing, IJMA also publish "Price Differentials." No such minimum prices have been fixed either for cotton bagging or for jute specialities. Among other things, their prices bear a close relationship with the ruling prices of jute and the ruling prices for the standard jute goods.

3.25 In respect of jute exports, the Government set up a Committee for voluntary registration of sale contracts. An exporter desirous of getting his contract registered under the scheme has to make an application within one clear working day of the finalisation of the contract. In scrutinising the contracts, the Committee takes into consideration the ruling prices at the time of the contract, the normal recognised trade practices in regard to allowable variations from such prices, extensions of contract, premia and penalties for optional specifications, rebates and trade discounts. On being satisfied, the Committee issues a certificate of registration. The Committee also considers requests for extension of the delivery period in respect of contracts already registered. It is gathered that more than 90% of the contracts are submitted to the Committee for registration.

3.26 In spite of the system of advance registration of contracts, in a trade like jute, where most of the exporters have their overseas associates, the scope for under-invoicing still exists. Under the system, there is no compulsion on the exporter to ship the goods after getting a contract registered. It is, therefore, possible for an exporter, having no firm order in hand, to register a contract, showing the name of his associate as the foreign buyer, at a time when the ruling price is low. If a deal is actually made subsequently, when the prices have gone up, he can take advantage of that earlier contract, and make the shipment at the lower price. By another variation, even when a firm deal has been made at a particular price, and a contract is registered in terms of such a deal, the exporter, in the event of prices coming down further, may not represent the actual exports as being made under the said contract, but may instead present another contract for the ruling lower price, either directly to the Customs, or again for registration to the Committee. The earlier registered contract at the higher price would get ignored, and the shipment made to appear as being under the substituted contract. We have suggested in chapter VIII that the procedure for registration of contracts should be compulsory and there should be follow-up action to relate contracts to actual shipments.

3.27 In some cases, it has been noticed that values are manipulated by misdeclaring the construction, yardage or the weight of the goods. A more rationalised system of physical examination of the goods at the manufacturing or packing stage, in coordination with the export inspection council authorities, would reduce the scope for this type of manipulation.

3.28 TEA — The main characteristic of the tea trade is that over 60% of exports are sold through auctions. The total value of tea exported during the year 1969-70 was of the order of Rs. 124.50 crores (approximately 8.8 per cent of the total exports). Of this, about 38 per cent was exported to U.K. alone. Exports of tea take place in one of the following ways: (a) shipment for London auctions; (b) shipment by merchant exporters on Calcutta auction price plus commission basis; (c) shipment by merchant exporters in accordance with samples at prices laid down by foreign buyers; (d) direct export by producers to buyers in foreign countries; and (e) export of blended tea by the merchants to certain countries. Exports on consignment account which comprise category (a) above are usually about 38 per cent of the total tea exports. In 1969, this proportion came down to 23 per cent. The remaining categories of exports, including the export of blended tea which is about 23 per cent of total tea exports, are on outright sale basis.

3.29 As regards category (a) above, the garden tea is directly shipped to London on consignment basis where it is sold in the London auctions. The final price repatriated to India is based on the auction price. The auction price is indicated in the publications of recognised brokers. We have gathered that at London auctions, there are four big buyers who purchase 90 per cent of the tea auctioned, while the balance is shared by the smaller buyers. For tea sold in the London auction, the check which can be exer-

cised by the Customs authorities at this end is somewhat remote. It would be desirable to have a check by our staff abroad in two respects. In the first place, we could send observers to watch that the auctions take place under open and competitive conditions and that the auction prices are correctly reflected in the brokers' publications. Secondly, this should assist in proper correlation of the auction prices with the account sales furnished to the Reserve Bank.

3.30 For exports under category (b) above, the export prices are based on Calcutta auction prices plus the broker's commission. The Customs generally check the export prices with reference to Calcutta auction prices. However, since by physical examination of the goods it is not possible to identify the quality of the tea, and in order that there is no possibility of substitution of the goods in the chests which were sold in auction, it would be desirable to have some check from the auction stage onwards. This would help in the proper correlation between the auction prices and the export prices. If these precautions are taken, and the auctions take place, as we gather, they do, under open and competitive conditions, there may be little scope for under-invocing of the tea exported under this category.

3.31 Category (c) above refers to shipments where purchasing organisations of foreign governments invite tenders for unblended tea, and the price is fixed on the basis of such tenders in accordance with the samples furnished. Here also there may not be much scope for manipulation of values. It is, however, necessary that the Customs authorities should ensure that the export prices are in accordance with the prices quoted in these tenders.

3.32 Category (d) covers exports made by producers directly to buyers in foreign countries without the tea having been auctioned anywhere in India. Here there could be a possibility of underinvoicing, particularly, in cases where the tea is consigned to a party abroad who has some financial link or interest with the Indian exporter. The volume of such exports is, however, small accounting for only 5 per cent to 6 per cent of our total exports of tea. For these exports, it would be necessary for the Customs authorities to compare the price of the tea exported with the price of the same quality tea from the same garden exported to other buyers.

3.33 Category (e) above refers to exports of blended tea. There are numerous blends of tea and, as such, there may be some difficulty in ascertaining the correct price. However, most of the blended tea is exported to East European and Middle East countries and import of tea in those countries is handled by government purchasing organizations and purchases are made against samples either at predetermined prices or on the basis of tenders. Therefore, the scope for manipulation is limited.

METALLIFERROUS ORES AND METAL SCRAP:

3.34 The total exports of these goods in the year 1969-70 were of the order of Rs. 118.27 crores (approximately 8.3 per cent of total exports). Of this, exports of iron ore and concentrates were of a value of Rs. 94.62 crores,

and those of manganese ores and concentrates were valued Rs. 14.71 crores. The export of iron ores, other than ore of Goa origin, and manganese ore, except ore produced/acquired by Manganese Ore (India) Ltd., is canalised through the Minerals & Metals Trading Corporation. The export of bauxite is partially canalised. For ores which are wholly canalised for export by MMTC, there ought not to be any scope for under-invoicing. Iron ore of Goa origin is a poor grade ore, and about 10-12 regular exporters compete with one another. In view of the inter-se undercutting among these exporters, the Government has fixed floor prices for different grades of the Goa iron ore. The Iron Adviser sees each contract with a view, inter alia, to checking that the export prices are not below the floor prices. Most of the iron ore exported from Goa is for Japan. The total exports in the year 1969-70 were roughly of the order of Rs. 45.6 crores. A small portion of the ore is also exported to East European countries. In view of the fixation of floor prices, keen inter se competition among the exporters and the scrutiny by Iron Adviser, the scope for underinvoicing is rather limited. It is, however, necessary to revise the floor prices from time to time so that they do not provide any scope for manipulation.

3.35 Prior to the canalisation of iron ore and manganese ore for export, there had been a number of cases where a large amount of foreign exchange was secreted by manipulating the analysis results of iron or manganese content, or the results of weighment or by manipulation in the implementation of the rise and fall clause of the contract. With the canalisation of exports for these ores, the scope for such manipulations has been substantially reduced. As far as analysis results are concerned, there are independent assayers, and to that extent, there is a safeguard against manipulation of the results. But as regards weighment, it appears the weight is generally based on draft weight of the vessel, and this may provide some scope for manipulation. A more satisfactory arrangement for the weighment of the ores is necessary and needs exploration. Similar care is necessary with respect to charter party agreements to guard against leakage of foreign exchange by freight manipulations or through operation of despatch/demurrage clauses of such agreements.

HIDES, SKINS AND LEATHER

3.36 During 1969-70, the exports of hides and skins were of the order of Rs. 88.84 crores (about 6.3 per cent of total exports), the major purchasers being U.K., U.S.S.R., Italy, German Federal Republic and U.S.A. The price depends on the size and quality of the hides and skins, and there is no proper standardisation of quality. Invoice values can be manipulated by misdeclaration of the quality of the hide or skin. The Customs staff is not properly equipped to make a precise judgment with respect to the quality. There is considerable scope, therefore, for the manipulation of invoice values going undetected. The export trade in hides and skins is carried on mostly through indenting agents. But a pattern of the major exporters establishing offices or subsidiaries abroad is emerging. While this is an essential part of trade expansion activity, this may increase the opportunity for under-invoicing. On the whole, therefore, exports of hides and skins

constitute a vulnerable area which merits the closer attention of valuing officers, who need to be trained to make a proper judgment with regard to quality.

TOBACCO (UNMANUFACTURED)

3.37 The exports of unmanufactured tobacco during 1969-70 were of the order of Rs.32.71 crores (approximately 2.3 per cent of total exports). About 50 per cent of these exports go to U.K. and 19.2 per cent to U.S.S.R. Of the exports to U.K., 50 per cent are made by three parties who also export to other countries.

3.38 There are certain characteristics peculiar to the tobacco export trade. Firstly, tobacco being an agricultural product, its quality varies according to such variable factors as the position of the leaf on the plant. Though grading of the cured leaves is done in India prior to export, standardisation is difficult, and the grades do not conform strictly to any international grading. Secondly, the representatives of foreign buyers come to India during the harvest season, inspect the crop and negotiate deals in the context of the world prices, and the crop condition of other tobacco growing countries. In respect of the exports to U.K., only a broad understanding of the prices is arrived at during the negotiations and the final price is settled after the exports are made. As a result, the invoicing of the exports to U.K. is, in essence, provisional in nature, even though the exports are supposed to be on outright sale basis. The U.K. buyers are also known to advance money pending settlement of the final price. In the light of the settlement of the final price, adjustments are made, and the necessary accounts in respect of such adjustments are furnished to the Reserve Bank of India. This procedure is not followed in respect of exports to other countries, like U.S.S.R. Prima facie, the conditions of the tobacco trade with U.K., particularly the nature of relationship between the exporters from India and the U.K. buyers, and the peculiar system of settling the final price after the goods are exported, would appear to be open to abuse. We have, however, to take note of three other factors in this connection, namely, (i) it is noticed that the export prices are generally well above the floor prices and in some cases by as much as 20%, and these gradewise floor prices are fixed on the recommendation of the tobacco export promotion council; (ii) it is also seen that the values of exports made by the few big exporters compare well with the values of the exports of comparable tobacco effected by other smaller independent exporters; and (iii) even where the exports by these big exporters are to their associates in U.K., the price charged is comparable with the price of their exports of similar tobacco to other parties in U.K. who are independent buyers.

3.39 It is true that a mere comparison of the export value declared by a particular exporter, with those declared by other exporters for similar tobacco or even with the floor prices fixed for such tobacco, is not by itself an effective check on the correctness of those values. This difficulty is

aggravated by reason of the fact that the quality of tobacco exported by one party can only be very broadly comparable to that exported by another party, because the grading of an agricultural commodity, particularly as it obtains at present, is not very scientific or precise. Added to this is the difficulty which is created by the present system of negotiation of the deals and settling of the final price after the exports are made. This creates a suspicion as to whether the export value is really the result of a free negotiation between two independent parties, or is dictated by the foreign buyer. Since one cannot arrive at conclusion regarding the true nature of the relationship between the major exporters and their foreign buyers by superficial examination, and the true nature of the understanding arrived at between them is not fully known, the tobacco exports would appear to be a vulnerable area, meriting closer attention. In this regard, the following measures could be usefully considered: (i) grading of the tobacco needs to be improved to bring about standardisation to the extent possible, so as to facilitate comparison and check of values; (ii) it should be ensured that floor prices are fixed realistically; (iii) the feasibility of introducing the system of auctions as in vogue in the tea trade and, failing that, on the pattern of the system in vogue in the coffee trade needs to be explored; (iv) the Customs Special Investigation Section for Exports, setting up of which we have recommended in Chapter V, should investigate the true nature of the relationship with the foreign buyers; (v) further, where the final price is not settled prior to export, the goods should move on consignment account basis and the procedure applicable to this should be followed. It is true that even under the present system the exporters furnish accounts of the adjustments of the final price to the R.B.I. but the system is strictly not in conformity with the existing law and is prone to give rise to legal complications.

3.40 CASHEW (Processed) — The total value of cashew kernel exported during the year 1969-70 was Rs. 57.42 crores (approximately 4.1% of total exports). Our major buyers of cashew are U.S.A. and U.S.S.R., which two countries take roughly 80% of the total exports. Checking the prices of cashew is a difficult task, as the prices depend on a number of variables such as the price of raw cashew, the stock of cashew with the exporters and the demand for cashew kernels. It may be mentioned that most of the cashew which is exported is processed from imported cashew and, therefore, the export prices of processed cashew have relevance to the import prices of raw cashew. Further, cashew being a traditional commodity, connections between the sellers and buyers are long established and, the possibility of under-invoicing cannot be ruled out. Though the export values of cashew depend on a number of variable factors, a useful comparison of prices is possible. If, as we have suggested in chapter VI, the Customs officers are kept fully informed of the necessary valuation data from India and abroad, it should be possible to detect any significant variation from the normal price.

3.41 GROUNDNUT OIL CAKES — The export of groundnut oil cakes during the year 1969-70 was of the order of Rs. 41.47 crores. Major purchasers of Indian oil cakes are Holland, U.K., Czechoslovakia, Hungary and Japan. A number of cases of under-invoicing in the export of this commodity have taken place in the past. In most of these cases, the analysis result

of the oil content which affects the export price was manipulated. The exports are now canalised through Groundnut Extraction Export Development Association which we hope will improve matters.

3.42 MARINE PRODUCTS — The total exports of marine products during the year 1969-70 were of the order of Rs.30.83 crores (approximately 2.2 per cent of total exports). The principal items of marine products exported from India are: frozen shrimp, canned shrimp, frozen frog legs, frozen lobster tails and dried marine products, Our major foreign markets are U.S.A., Japan, Australia, U.K. and European countries. The exports to U.S.A. are made on consignment account, and represent a little over 50% of the total exports. Shark fins and fish maws to Singapore and Hong — Kong are also exported on consignment basis, which account for only 1.3 per cent of the total exports of the marine products. Exports to other countries who buy marine products from India are on outright sale basis.

3.43 As far as frozen shrimps exported to U.S.A. are concerned, the price in U.S.A. is quoted in what is known as the "Green Sheet" published by the Bureau of Commercial Fisheries of the U.S. Government on a weekly basis. The exporters draw an agreed percentage (70 to 80) of the prices reported in the "Green Sheet" at the time of shipments by means of standing letter of credit established by the importers/agents in the U.S.A. The final sale price is determined after the shrimps are sold in U.S.A., and this amount, after deduction of the agency commission and other expenses which are to the exporter's account, is expected to be repatriated to India. What is required to be ensured in these cases is that the 70 per cent or 80 per cent provisionally realised amount does not become the final sale price, and the difference is surreptitiously adjusted. If proper market intelligence regarding the final sale prices in U.S.A. is made available to the Reserve Bank, it should be in a position to check that the actual sale price is brought back to the country. It is also necessary for the Reserve Bank to ensure that the deduction on account of agency commission, or other expenses, is not in excess of the usual rates allowed in this trade. In fact, even the exporters represented to us that the U.S.A. importers were holding down the prices of Indian shrimps, and Indian exporters were suffering because of lack of proper market intelligence and alternative marketing arrangements in U.S.A. This underlines the need of continuous supply of market intelligence from abroad which would help both Customs and the Reserve Bank in exercising an effective check on the values of shrimp exported to U.S.A. Cases of under-invoicing have also been reported in the case of shark fins exported to Hong Kong and Singapore. Here also there is urgent need for a regular supply of information regarding the prices prevailing in Hongkong and Singapore.

3.44 SPICES — The value of spices exported during 1969-70 was Rs.34.49 crores (approximately 2.4 per cent of total exports). Our main customers for the spices are: U.S.S.R., Kuwait, Ceylon, Saudi Arabia and U.S.A. The major spices exported from India are: pepper, cardamom, chillies, ginger, turmeric and curry power. Most of the exports are to independent buyers and more than 1/3rd of the exports are to rupee-payment

countries. All spices are subject to wide fluctuation in prices, essentially depending upon internal production, demand and competition from other producing countries. There are different grades and qualities in each of the spices, and the prices vary not only as between various grades, but also on the basis of the countries to which they are exported. Further, the prices also differ according to the delivery period. In view of these factors, it will be difficult to detect marginal cases of under-invoicing. Like jute, for spices also it may be possible for an exporter to justify the under-invoiced prices on the basis of a forward delivery contract for a date when the ruling prices were low. Three measures which we have suggested elsewhere also, apart from better Customs expertise which is in any case essential, are: (i) standardisation of qualities; (ii) collection of value information internally and from abroad; and (iii) a proper scrutiny of the terms of the contract. These will, in our opinion, make the task of valuation easier and more effective. Advance registration of contracts on the pattern of jute will also be useful and this should be made compulsory. The valuation of curry powder poses difficulties in view of the different blends and composition of the curry powders. This difficulty would, to some extent, be obviated by standardisation of the qualities and, when considered necessary, by examination of the costing accounts of the exporters.

3.45 MICA — The total exports of mica (including splittings and wastes) during the year 1969-70 were of the order of Rs.15.23 crores (a little over approximately 1% of total exports). In addition, cut mica, condenser films and plates were exported to the extent of Rs. 1.13 crores. For some specific categories of mica, such as mica blocks, mica splittings, films, etc., the Government has fixed floor prices. In order that these floor prices should not become ceiling prices, or so unrealistic as to frustrate the exports, it is necessary that these are kept under constant study and revised as soon as necessary. For other categories, which comprise fabricated mica and manufactured mica, no floor prices have been fixed. In the latter category, the Customs are not at present fully equipped to check the values. To enable the Customs to exercise effective valuation check, they need to be better informed of the prices prevalent in India and abroad. It appears that the main difficulty of valuation with regard to mica arises from the differences in ouality. This difficulty has, however, been partly removed by the quality inspection and certification of mica by the agenices of the Export Inspection Council. The Customs staff should also be imparted training with regard to qualities of mica.

3.46 FILMS — The exports of films during the year 1969-70 were of the order of Rs.4.35 crores (approximately .03% of total exports). It is almost impossible to verify the correctness of the values of films exported, because what is really sold is the right to exhibit the film in specified territories. The value of a film depends on a number of intangible factors, such as the likely response which the film may receive abroad. These factors are not capable of being evaluated with any degree of certainty. We feel, the Government should examine the feasibility of canalising the exports of films through an official export agency.

3.47 DIAMONDS AND PRECIOUS STONES — The total value of pearls, precious and semi-precious stones, including diamonds, exported during the year 1969-70 was Rs.41.97 crores (approxmately 2.9% of total exports). Out of this, the value of diamonds was Rs.25.71 crores. Most diamonds are exported on outright sale basis, whereas export of precious stones is mostly on consignment basis.

3.48 The price of a diamond is essentially dependent on four factors: (i) size; (ii) colour; (iii) cut; and (iv) perfection or purity. It was represented that a diamond could be valued fairly accurately by experts and the various assessments of value need not vary by more than 10% to 15%. It is gathered that in the documents, including invoices, the exporters do not give sufficient details of the diamonds. They also do not indicate in the shipping bills the market value of the diamonds in India. It would help considerably in valuation, if it is insisted upon the exporters that they declare the size, colour, cut and perfection of the diamond in the invoice. We understand that for colour, purity and cut, there are standard nomenclatures which are understood throughout the world, such as pink colour, blue colour, extra white colour, white colour, crystal or commercial white; for purity there are terms, such as 'perfect', 'slightly imperfect', 'very slightly inperfect' and 'pique'. Similarly for cut, there are standard terms such as 'brilliant cut', 'single cut', etc. If all these details are available in the invoice, comparison of values with the prices quoted in the world markets would be easier. We would also suggest that in the shipping bill, in addition to the export value, the exporter should also be asked to declare the local market value of the diamonds. The difference between the local market value and the export value would enable the appraising officer to make a better judgment regarding values.

3.49 In the case of precious stones, generally it has been noticed that the prices finally realised are far below the prices declared on the GR forms. This is partly explained on the ground that the originally declared prices are some-what loaded with a view to getting advantage in negotiation with the overseas buyer. But this may not always be the true explanation. In our opinion, the scrutiny of values in the case of precious stones should be closer in view of the fact that the exports being largely on consignment account, manipulation of final sale price is comparatively easy. In this connection, it is relevant to mention that if the exporter is not able to sell precious stones exported on consignment account at the price declared by him, he seeks the permission of the Reserve Bank for selling the same at a reduced price. At this stage, the Reserve Bank of India is required to make a judgment as to whether the sale should be allowed at the reduced price or not. It was suggested that it would help the Reserve Bank in making a judgment in this regard if the Customs intimate to them separately the minimum price of the stones. We endorse this suggestion. In our view, the exporter should, in addition to the loaded value, be asked to declare the fair value of the goods. The Customs can verify the fair value, and inform the Reserve Bank of this. In cases where there is doubt that the request for the

Reserve Bank's permission for selling the stones at a reduced price is not genuine, further enquiries could be made from our agencies abroad before a decision is taken.

3.50 HANDICRAFTS & ARTWARE — The main item exported is woollen carpets, the exports of which in the year 1969-70 were of the order of Rs. 10.16 crores. The exports of works of arts and collectors' pieces were of the order of Rs. 15.08 crores. For woollen carpets, the Government have fixed minimum floor prices. Items of handicrafts and artware would comprise two types of articles: (i) standard articles where comparison of values with the goods of like kind and quality is possible; and (ii) sophisticated goods where comparison of values is generally not possible, since the quality of each product differs from the other. As for the standard items, what is necessary is sufficient expertise with the Customs authorities for identifying the quality of the goods, with a view to comparing the values with goods of the like kind. The Customs authorities should also consult and take assistance from the All India Handicrafts Board, where necessary. With regard to sophisticated items, there may be difficulty in ascertaining the correct value. To some extent, the difficulty in valuation can be obviated by suitable enquiries in the trade, and by checking the procurement prices of those goods in India. Besides the problems of valuation, cases have occasionally been noticed where persons attempted to send large quantities of items like scarfs, sarees, brassware and paintings in the guise of baggage or as gift parcels. This problem is such as can be tackled essentially by developing proper intelligence, and to a limited extent by exercising a more vigilant check with regard to baggage and gift parcels.

3.51 IRON & STEEL INCLUDING FERRO ALLOYS AND FERRO MANGANESE — The value of this item exported during 1969-70 was of the order of Rs. 86.83 crores (approximately 6.2 per cent of total exports). The major purchasers of this item are Japan, Iran, U.S.S.R., Thailand and Iraq. All applications for export licences are routed through the Steel Exporters' Association, which represents the main producers of steel. The Iron & Steel Controller has introduced a system of floor prices. These floor prices are generally based on international prices as quoted in the journal "METROPOLITAN" published in London. For Benelux and other European countries, some adjustments are made in these floor prices. The floor prices differ with reference to the countries to which these goods are exported. The largest exporters of iron and steel products are Hindustan Steel, Tata Iron & Steel Co. and Indian Iron & Steel Company. As stated by us elsewhere, floor prices need to be kept under constant watch and revised periodically, as and when necessary.

3.52 ENGINEERING GOODS — The exports of engineering goods during the year 1969-70 were of the order of Rs. 106.37 crores (7.5 per cent of the total exports). The main items of engineering goods exported from India are: (i) fabricated iron and steel goods; (ii) non-ferrous products; (iii) plant and machinery; (iv) machine tools and accessories;

(v) small tools and hand tools; (vi) railway stores; (vii) automobile ancillaries; (viii) agricultural implements; (ix) diesel engines and pumps; (x) electrical goods; (xi) office and hospital equipment; and (xii) hardware. For exports to some of the destinations, the Engineering Export Promotion Council has fixed floor prices for cast iron casting, pressure stoves and lanterns, mild steel pipes and tubes, steel wire ropes, bicycle components, steel trunks and CI spun pipes. It was mentioned to us that most of the exports are to public utilities, like, electricity boards, railways, port authorities and other Government departments or to other independent buyers. Nearly 50 per cent of our exports of engineering goods are stated to be against global tenders where the overall technical competence, capacity, competitive prices, length of credit, delivery schedules etc. play the determining role. There is no significant variation in prices on account of brand names. To this extent, comparison of values with those of the similar goods should be possible. At present, the following schemes of assistance are available to the exporters of engineering products: (a) cash subsidy, (b) import replenishment licences, and (c) supply of pig iron and steel at international prices. In view of these schemes, the exporters may not generally be tempted to under-invoice their goods. Manipulation of invoice values is also difficult because of the contacts with the overseas buyers being comparatively new. On the other hand, the valuation of the engineering goods is somewhat difficult because of the varying qualities of the products exported, and this, sometimes, may be exploited to his advantage by an unscrupulous exporter. We, however, feel that by a better inflow of information from abroad and locally coupled with expertise at the assessing level, valuation check can be made more effective. In doubtful cases, examination of the costing accounts would be helpful in determining the correct value of such goods.

3.53 COTTON PIECE GOODS (Mill-Made) — The total exports of cotton piece goods (mill-made) during the year 1969-70 were of the order of Rs.62.44 crores. The export prices are based on the mill prices. It is gathered that there is no special difficulty with regard to valuation of these goods.

3.54 CHEMICAL & ALLIED PRODUCTS— The toal exports of this commodity were of the order of Rs.30.30 crores. Most of the items are covered by the import replenishment schemes and cash assistance. For exports under this category, floor prices have been fixed. Certain other small items under this category are exported against international tenders. It is gathered that the Export Promotion Councils have some correspondents abroad who supply value information to the councils. The number of such correspondents is, however, small. It would be desirable if the Customs authorities keep in close touch with the Export Promotion Councils who are better informed with regard to values of the items with which they are concerned.

3.55 SEHLLAC — The value of shellac exported during the year 1969-70 was Rs.3.70 crores. These exports are subject to floor prices fixed by the

Government from time to time. The Export Promotion Council scrutinises the contracts and issues the price scrutiny slips on the basis of which the Export Trade Control authorities grant export licences. It has, however, been noticed that for all practical purposes, the floor prices have tended to become the maximum prices except in abnormal situations. It is, therefore, necessary to keep a careful watch over the floor prices.

3.56 COFFEE — The total exports of coffee during 1969-70 were of the order of Rs. 19.62 crores (about 1.4 per cent of total exports). Over 70 per cent of the exports of coffee are to East European countries under bilateral trade agreements. The Coffee Board is charged with the marketing of coffee in India and abroad, and with controlling the exports of coffee from India. Prior to the commencement of each season, the Board makes an allocation for exports out of the season's crop, based on the estimates of production and the needs of the internal market. The coffee allocated for exports is released by the Board for export after auctions which are held periodically, and spread almost throughout the year. Only exporters of coffee registered with the Board are allowed to participate in these export auctions. The exporters who buy coffee in these auctions are free to export the coffee to any destination of their choice, unless specified by the Board. A couple of years back, the Board was obtaining particulars of sales effected by the exporters of coffee to their foreign buyers, and examining the export realisations with reference to the value at which the exporter bought coffee in the export auctions. The scheme was subsequently given up. It may be worthwhile for the Coffee Board to resume such examination. It was stated by the representative of the Coffee Board that after adding to the auction price charges such as those for freight and insurance, and the margin of profit of the exporter, one could get a rough idea of the export values. However, the export values would also depend upon other factors, such as the ruling prices abroad at a particular time, and also the market fluctuations in India. Therefore, besides correlating the export values with reference to the auction prices, it is essential that Customs authorities are aware of the market fluctuations with regard to export prices. In view of the fact that the Coffee Board is solely responsible for the marketing of coffee in India and abroad, and as more than 70 per cent of our exports are to rupee-payment countries, the feasibility of the Coffee Board entering the export trade of coffee could also be considered.

OVER-INVOICING OF IMPORTS

Commodities vulnerable to over-invoicing of imports.

3.57 We have examined above very broadly the scope for under-invoicing with regard to major commodities exported from India. We now deal with the import side. The main commodities which are vulnerable from the point of view of over-invoicing of imports are: (i) capital goods and heavy machinery; (ii) commodities which are under open general licence, or which are liberally licensable; and (iii) commodities which are not dutiable on ad valorem basis or which are free of duty. The position with regard to these commodities is as follows.

3.58 CAPITAL EQUIPMENT AND MACHINERY — The total value of capital equipment and machinery imported during the year 1969-70 was of the order of Rs.221.08 crores. Though a substantial portion of these imports is on Government account, in a large number of cases, the imports are actually effected by private importers against letters of authority issued in their favour. The valuation of capital equipment and custom-built machinery is, indeed, a difficult task. In the very nature of things, after the imports have taken place, the examination of the goods may not help very much in the valuation of such equipment. Therefore, the check of the values has necessarily to be made at the sponsoring stage. We have suggested in chapter IV that before issuing an import licence for such equipment, tenders are invited so that an idea may be formed as to the values of comparable equipment emanating from different sources in the country or the currency area from which import is to be made. This would enable the licensing authorities to select the quality of the equipment and the source of supply, and indirectly would also provide a valuation check. With the gradual untying of aid, this course could be adopted in more and more cases where the value of the equipment imported is large.

3.59 COMMODITIES WHICH ARE UNDER O.G.L. OR FREELY LICENSABLE AND WHICH ARE FREE OF DUTY OR NOT DUTIABLE ON AD VALOREM BASIS — There is a possibility of goods which are not dutiable on ad valorem basis, or which are free of duty, being overinvoiced on import, but the likelihood of this happening is remote if the import of the commodity is subject to rigid import trade control restrictions. In the latter case, the margin of profit on the goods in India is generally high, which acts as a disincentive to over-invoicing the imports. Therefore, the scope for over-invoicing of imports could mainly be with regard to those commodities which are under open general licence, or are liberally licensable, and at the same time are either free of duty, or the incidence of duty is negligible. The following commodities may fall in this category.

3.60 HIDES & SKINS (UNDRESSED) — The total imports of hides, skins and fur skins (undressed) during the year 1969-70 were of the order of Rs.1.70 crores. Most of the goods belonging to this category are under open general licence. For other hides and skins which are licensable, import licences were liberally issued under the erstwhile export promotion schemes. A number of cases of over-invoicing of imports of these commodities were reported. In some, the extent of over-invoicing was as large as 284 per cent. It is gathered that some of these imports took place at minor ports. There is need for making the valuation check with regard to this commodity more rigorous, and it would also be desirable that the appraising officers are given training with regard to the various qualities of hides and skins, so that they are able to identify their qualities properly and assess their values. To improve the valuation check, there is also need for collection of valuation data, and its dissemination to various ports, particularly the minor ports, where the chances of such cases remaining undetected are greater.

3.61 CASHEW (Raw) — The imports of raw cashew during 1969-70 were valued at Rs.27.60 crores. Raw cashew is also under open general licence and, therefore, the possibility of its being over-invoiced exists.

Recently, the Government have set up a Cashew Import Corporation for the import of raw cashew, which should solve the problem.

3.62 BOOKS — The imports of books during 1969-70, excluding the imports through post, were roughly of the order of Rs. 4.70 crores. Some time back, books were under open general licence but now they are licensable. The licensing policy in respect of books is, however, liberal. The prices of the books are subject to varying discounts. The valuation of books presents problems of its own, because of the discount system. The Customs authorities need to have a better idea of the normal range of discounts for the different categories of books, such as fiction, technical literature.

3.63 WATTLE EXTRACT AND OTHER TANNING MATERIAL — The import of these items under O. G. L. is limited and not many cases of invoice manipulation have been reported. However, a closer check on the values is necessary to ensure that these goods are not over-invoiced.

CHAPTER IV

IMPORTS

The Scheme of Exchange Control in Relation to Imports:

4.1 With a view to locating the deficiencies in the existing system which enable leakage of foreign exchange through imports, it would be necessary to examine the scheme of exchange control in relation to imports. This comprises control in respect of: (i) release of foreign exchange for import of goods; (ii) utilisation of such exchange; and (iii) valuation of imported goods.

Release of foreign exchange.

4.2 The release of foreign exchange for imports is regulated through the mechanism of import trade control. The scheme of import trade control envisages a total prohibition on importation of goods unless the import is covered either:

(i) by a valid Import Trade Control licence issued (in two copies - Customs copy and Exchange Control copy) in accordance with the relevant import trade control policy; or

(ii) by any open general licence; or

(iii) by one of the "savings" enumerated in the Import Trade Control Order, such as imports as baggage, gifts upto certain value, imports by U.S. agencies, import of goods bonded on arrival for re-export, imports by diplomats or imports by Central Government for defence purposes.

4.3 Import licences, broadly speaking, are of three types - Established Importer's licences, Registered Exporter's licences, and Actual User's licences. In April-March, 1970, the values of the licences issued in these three categories were respectively of the order of approximately Rs.43.83 crores, Rs.85.92 crores and Rs.757.50 crores (excluding licences of Rs.242.80 crores, issued to State Trading Corporation, Minerals & Metals Trading Corporation and National Small Industries Corporation and licences of Rs.22.06 crores to Government departments or against Government contracts; Customs Clearance permits of Rs.43.61 crores and blanket licences of Rs.4.44 crores). Established Importer's licences are issued for items permissible to this category of importers in the relevant import trade control policy, in accordance with quotas fixed on the basis of the imports made by them during specified previous years. The import policy for Established Importers is progressively getting more and more restrictive. Actual User licences are issued, on the recommendation of the sponsoring authority, except in the case of existing small scale units, for items required by an Actual User for use in his industry. Registered Exporter's licences are issued to exporters for purposes of replenishment, depending upon their export performance. Generally, the licences are issued for such items as are used in the manufacture of the export products.

4.4 The exchange control authorities do not permit remittance against imports unless the import is covered by a "saving", or an open general licence, or is authorised to be made in terms of the exchange control copy of the import trade control licence. At present the items under O.G.L. are few. The items covered by "savings" import of which does not require an I.T.C. licence are mostly those which are supposed to have been supplied free and do not, therefore, involve any remittance. There is only a small area of this exempted category where remittances are involved. Remittance against import licence is allowed on the basis of the exchange control copy of the licence, and strictly in terms thereof. Not only the extent but even the method and manner of payment are, at times, regulated by the conditions of the import licence. Currency in which payment for imports is to be made may also be regulated by the import licence, particularly in the case of licences issued under specific Project Loans or under bilateral agreements. But where no specific direction is contained in the import licence, the method and manner of payment against imports are governed by the instructions - some of which are statutory - issued by the Reserve Bank from time to time to their offices and the authorised dealers.

Different modes of remittance.

4.5 Remittances for imports may be made in one of the following ways:—

(i) Advance remittance;
(ii) Through a letter of credit [other than cases falling in category (i)];
(iii) Against sight drafts or usuance bills;
(iv) Deferred payment.

4.6 Advance payments (remittances), i.e. payments in advance of the shipment of goods, are not allowed against Open General Licences. Even against import licences, advance remittance is allowed only in specific situations for particular categories of imports, and to a limited extent. Permission for advance payments (remittances) against exchange control copies of import licences for capital goods (C.G.) and Heavy Electrical Plant (H.E.P.) may be given in accordance with the terms of the relative contracts. The advance remittance generally constitutes only a small percentage of the contract value. In such cases, letter of credit may be opened providing for payments against documents other than shipping documents. Advance payments (remittances) against other categories of import licences may also be allowed in cases where the amounts are petty and it would be disproportionately expensive to make remittances under letters of credit, such as advance remittances by individuals, clubs, libraries, institutions and firms (including regular booksellers) upto a limit of Rs.1,000 in any single case for import of books, or remittance for imports by post upto a specified value limit.

4.7 As stated above, in the case of goods covered by C.G. and H.E.P. licences, letter of credit may be opened with the permission of the Reserve Bank, providing for payments against documents other than shipping documents. Further, the Reserve Bank may also allow opening of credits providing for payment against documents other than shipping documents (such as warehouse receipts, manufacturer's certificate, etc.) for import of essential articles such as steel, fertilisers etc. in cases where it is satisfied that the goods cannot be obtained except on these terms. But in the case of ordinary

licences, credits are opened which provide for payment against shipping documents only. Credits coverings imports under an Open General Licence are not opened for periods longer than six months and payments must invariably be made against shipping documents.

4.8 The bills received for collection have invariably to be accompanined by the shipping documents, and payment is made by the importer against receipt of the shipping documents.

4.9 Deferred payment and remittance of interest are not allowed unless the licences specifically provide for such payment.

4.10 All these four methods of remittance pertain to imports where the documents come through banking channels. Such remittances are in accordance with the well recognised international trade and banking practices. Where the documents are received directly by the importer and not through banking channels, the bank through which the remittance is made is required to obtain from the importer the exchange control copy of the Customs bill of entry and submit this to the Reserve Bank. Where at the time of making the remittance the goods have not arrived in India, the importer has to give an undertaking to produce the relative customs bill of entry within three months. It is then the duty of the authorised dealer to collect the bill of entry from the importer within the stated period, and forward it to the Reserve Bank. We expect that in all such cases the Reserve Bank ensures that the exchange control copy of the bill of entry is submitted to it, and there is no lapse in this regard. The Reserve Bank is also expected to ensure that where an importer is unable to produce the Customs bill of entry within the permitted period, an explanation is obtained from the importer and if the explanation is not found to be satisfactory, suitable action is taken against him.

4.11 In this scheme of control regulating release and utilisation of foreign exchange, we have to examine whether there is scope for leakage of foreign exchange and how far such leakage could be prevented or reduced. The questions that arise for consideration are:—

(i) Is there scope for licences being issued where these should not be issued, or for their being issued for a higher value or quantity than warranted?

(ii) Can foreign exchange be remitted under the cover of importing worthless goods and is there also any possibility of remittances being made without importing any goods?

(iii) What is the scope for leakage of foreign exchange by over-invoicing the imported goods? and

(iv) What can be the other modes of leakage of exchange in relation to imports?

LICENSING

Established Importers' Licences.

4.12 As mentioned above, established importers' licences are issued on the basis of fixed quotas and, therefore, there is little scope for licences being issued where they should not have been issued, or for licences being issued for a value higher than that to which the established importer was eligible.

Registered Exporters' Licences.

4.13 In the case of import licences issued under the registered exporters scheme, the licence value is dependent on the F.O.B. value of the export, and the value of the import content in the export product as fixed from time to time. Under the earlier export promotion schemes, licences were being issued even for those items which were not used in the manufacture of the export product, and there were not many restrictions with regard to the sale of such imported items. The import entitlements were also on a fairly high scale. Consequently, those schemes provided incentive for over-invoicing the exports with a view to getting import licences for higher value for sensitive items which carried a high margin of profit in India. In the registered exporters' scheme, which is in force, the import licences are normally issued in favour of manufacturers who are borne on the books of the concerned technical authorities, namely, D.G.T.D., Textile Commissioner, State Directors of Industries, etc., subject to the condition that the goods imported under the licence are utilised in the licence holder's own factory. However, in the case of certain specified products which are mainly decentralised on a cottage industry basis, an option is allowed to merchant exporters to obtain replenishment licences in their own name provided they get the imported goods used by a manufacturer on the exporters' account and undertake not to sell the goods or otherwise dispose them of. The import licences are issued for such raw materials, intermediates, components and parts as are used in the manufacture of the export product and the licensee has the option to obtain these from any source of his choice. Further, the percentage of replenishment is based on the concept of single import content, which means that the percentage of replenishment will be according to the percentage of the import content in the export product. For these reasons, as compared to the erstwhile export promotion schemes, in the new scheme the scope and incentive for over-invoicing the exports with a view to getting higher import entitlements are greatly reduced.

4.14 It is, however, necessary to keep these schemes under review to ensure that they do not develop an impetus or scope for the type of malpractices that could be perpetrated under the erstwhile export promotion schemes. For that purpose, it would be necessary to review the percentage of import entitlements from time to time. Imports of items which carry very high margins of profit in India and for that reason could provide an incentive for being sold unauthorisedly in India should be allowed to the extent absolutely necessary, and after a careful scrutiny of the requirements. Steps to ensure that the import licences are issued strictly in terms of the Registered Exporters' Scheme, are also necessary.

4.15 Another important aspect of the Registered Exporters' Scheme relates to the question of nomination by merchant exporters. The party nominated is an actual user who gets licences, as a nominee of the merchant

exporter, as well as in his own right as an actual User. Thus, it could happen that he gets licences much in excess of his requirements. We suggest that while issuing licences to the nominee of the merchant exporter, the capacity of the nominee to utilise the licensed goods should be kept in view.

4.16 The office of the Chief Controller of Imports & Exports has a unit which examines the licences issued under the Registered Exporter's Scheme with a view to checking whether the licences were issued for the correct value. The Department of Economic Affairs in the Ministry of Finance also has a cell whose responsibility is to audit the issue of import licences under the Registered Exporters' Scheme. This cell examines about 5 per cent of the licences issued for the various categories of export products. The accuracy of the quantum of licence is checked both arithmetically, as also from the point of view of the registered exporters' policy. The verification is made on the basis of the shipping bills, invoices, etc. kept in the offices of the regional import licensing authorities. Where it is established that the import licence was issued for a value higher than the entitlement, the excess value is adjusted in the value of the licences issued to the particular licensee in future. Such adjustments or recoveries are also watched by audit. But where the import licence is issued for a wrong item due to mis-interpretation of the policy, the matter is referred both to the Chief Controller of Imports & Exports and the Ministry of Foreign Trade for further action. It is gathered that this audit cell is also being associated in the formulation of the registered exporters' policy and the related procedures. During the last five years that this audit cell is functioning, it has been able to detect a number of cases where licences were issued for values higher than the entitlements. The excess value for which the licences were issued for these years came to about Rs.4 crores, and as a result of audit, the foreign exchange was saved by reducing the entitlement of the licenses to this extent in respect of their future licences. We consider that in view of the usefulness of this audit, it would be desirable that the audit scrutiny is stepped up to about 15 per cent.

4.17 As mentioned above, in the registered exporter's scheme the import entitlements are based on the F.O.B. value of the exports, and save for specified commodities, or some specific type of cases, the import licences are issued even before the foreign exchange proceeds of the exported goods are realised. The types of cases where licences are issued after the sale proceeds are realised from abroad relate to export of gems and jewellery, cinematographic films (exposed), exports on consignment basis, supplies made to foreign shipping companies as ship's stores, sales made at international exhibitions abroad, sales of handicraft items to foreign tourists, and exports by value-payable-post parcel. There is also a special procedure with regard to export of books, journals and periodicals by post. Barring the aforesaid categories of exports, for other exports, the registered exporter, for the purpose of getting the import licence, is required to submit, in addition to export documents, a declaration given to the bank, and a certificate from the bank, in the prescribed form, to the effect that the export documents have been negotiated/purchased/sent for collection of the export bill drawn by the exporter for the amount mentioned therein. The import licences are issued on the basis of such bank certificates. Where the export proceeds are subsequently not realised, the list of such cases is forwarded by the Reserve Bank to the

licensing authorities, and the value of the import licences issued is adjusted against the future entitlements of the said exporter. We recommend that an exporter who repeatedly indulges in such malpractice should be debarred from obtaining the benefits available under the Registered Exporters' Scheme as provided in Clause 8 of the Imports (Control) Order. In fraudulent cases, besides the action which may be taken against the exporter under the Foreign Exchange Law for non-repatriation of the export proceeds, action should also be taken under the Import & Export (Control) Act for contravention of Clause 10(d) of the Imports (Control) Order which specifically provides that no person shall employ any corrupt or fraudulent practice in obtaining any licence or in importing any goods. This is not being done at present.

Actual user Licences.

4.18 As regards the actual users, the licences are issued on the recommendation of the sponsoring authorities who certify whether the materials applied for are essential for the manufacturing unit of the applicant. In the case of small scale units, their requirements are checked for the first time and subsequently licences are issued without further verification. While recommending grant or refusal of licences, the sponsoring authorities are required to keep in view: "(i) foreign exchange availability or the other monetary ceilings; (ii) availability of the goods applied for from indigenous sources or other commercial channels; (iii) essentiality of the goods applied for; (iv) stocks in hand and expected arrivals; (v) past imports and past consumption of the items in question by the applicant; (vi) actual production during the preceding period; (vii) estimated production; (viii) policy in respect of items sought to be imported; and (ix) other factors relevant and necessary in terms of the policy in force." Broadly speaking, there are three categories of industrial actual users, namely: (i) scheduled industries borne on the registers of the Directorate General of Technical Development; (ii) scheduled industries not borne on the registers of the Directorate General of Technical Development and non-scheduled industries other than small scale industries; and (iii) small scale industries. The D.G.T.D. is the sponsoring authority for industries borne on its registers. For small scale industrial units, the State Director of Industries is generally the sponsoring authority. For other categories, there are different sponsoring authorities.

4.19 Cases have occurred in the past where: (i) the essentiality certificates were forged and licences obtained on the basis of such forged certificates; (ii) essentiality certificates were issued in favour of parties who had no manufacturing unit or industry where the imported items could be used; (iii) the essentiality certificates were issued for quantities of materials much greater than those actually required by the actual user for his industry; and (iv) import licences were issued for a value higher than that for which they should actually have been issued.

4.20 So far as the first type of cases are concerned, in the nature of things, there cannot be any perfect method of preventing such forgeries. Under the present system, the application for licence is submitted to the sponsoring authority, and the sponsoring authority forwards this along with its recommendation directly to the licensing authority. The method of issuing separate essentiality certificates has been discontinued. The D.G.T.D. gives some security numbers on the applications for licences while forwarding them to the

licensing authorities. The Directorates of Industries send to the licensing authorities weekly statements of the applications sponsored by them. With these precautions, commission of such forgeries has become more difficult. We would suggest that the Directorates of Industries of the State Governments should also give security numbers on the applications forwarded by them.

Need for Central Enforcement Machinery.

4.21 As for the second and third types of cases, these involve fraudulent mis-representation on the part of the licensee, and at times also the connivance or carelessness of some officials of the sponsoring authorities. In the circumstances, there is need for greater caution on the part of the licensing authorities in issuing licences, particularly where the amounts involved are large, or the applicants are newcomers. A number of cases have been detected where actual user licences have been misutilised and the goods imported have been disposed of. This clearly involves misuse of the foreign exchange released. The same problem exists with regard to the licences issued under the registered exporters' scheme. At present, there is no machinery which checks the utilisation of such licences. In the case of some Established Importer's licences also, there are conditions regarding the mode of disposal and the price at which the imported goods can be sold. All this underlines the need for some central enforcement machinery which could keep a watch over the utilisation of the licences and verify the utilisation of the goods imported. At present, to some extent, the Directorates of Industries exercise a check in this regard, which should continue. But, in addition, if there is a central enforcement machinery, which could do even a percentage check, the position, in our opinion, would improve considerably. This central enforcement machinery, in any case, is necessary for checking the utilisation of licences issued on the recommendation of the D.G.T.D., for which there is at present no physical verification. We recommend, therefore, that there should be a central enforcement machinery for checking the capacity of the industrial units, and the utilisation of the goods imported by such units.

4.22 In order to ensure that the import licences are not issued for a larger quantity than is really required by the actual user and also to check that the goods imported against those licences are not sold away, the actual users are required to maintain in the prescribed form a proper account of the utilisation of the imported goods. In addition, the actual users borne on the registers of the D.G.T.D. have to submit monthly production returns to the D.G.T.D. For other actual users, the concerned Director of Industries is to exercise a check regarding the utilisation of the imported goods. Apart from these checks, some kind of physical checking and verification on the spot by the central enforcement machinery, suggested in the foregoing paragraph, would be desirable.

Trafficking in licence, and sale of goods imported under Actual User licences.

4.23 The proposed central enforcement machinery could help in unearthing cases of trafficking in licence, and unauthorised sale of goods imported against actual user licences. At present, persons indulging in such malpractices who are caught are prosecuted under the provisions of the Imports & Exports (Control) Act, 1947. The prosecution cases tend to be long drawn out, and it is desirable that in addition to prosecution, there is a provision for adjudication by an administrative authority acting

in a quasi-judicial capacity, who could promptly adjudge fines and penalties. Two actions simultaneously, one by way of monetary punishment, and the other by way of prosecution would have a salutary effect. We understand that Customs have adequate legal powers to deal with cases of trafficking in licence. In proved cases of misutilisation of actual user licences, or of the goods imported under those licences, the Central Government or the Chief Controller of Imports and Exports have, inter alia, power under clause 8(f) of the Imports (Control) Order to debar a licensee from getting further import licences for a specified period. However, neither the Customs Act, nor the Imports & Exports (Control) Act, provide for a departmental adjudication for adjudging fines and penalties in cases where the goods are sold after importation, in contravention of Import Trade Control Regulations or of the conditions of an import licence. Formerly section 111(o) of the Customs Act was being invoked in such cases, but the interpretation now is that this sub-section does not cover this type of situation. We recommend that suitable legal provisions be inserted in the Imports & Exports (Control) Act, conferring powers on the import trade control authorities to impose fines and penalties for such contraventions.

Power to suspend the operation of a licence.

4.24 Clause 9 of the Imports (Control) Order gives power to the Central Government, or the Chief Controller of Imports and Exports, or any other officer authorised in this behalf to cancel or render ineffective an import licence on any of the grounds mentioned therein. One of the grounds mentioned is obtaining a licence by fraud or mis-representation. It has been observed that even when such cases are detected, it takes a long time before the licences are cancelled; generally the delay is due to the time taken in the investigation of such cases. In the meanwhile the remittance against such licence may have been made, and quite often the goods may have also been imported. It is, therefore, necessary that the investigations in such cases are completed with utmost expedition. Further, in all such cases, it should be possible to take immediate steps (i) to prevent the remittances if not already made and (ii) where goods have been imported against such licences, to prevent their clearance through Customs. For achieving these two objectives, it is necessary that the licensing authorities be given legal power to suspend the operation of the licence pending the investigations when they are, prima facie, satisfied that the licence was obtained on fraudulent mis-representation. In order to prevent abuse, this power should be exercised at a high level, namely, that of Chief Controller of Imports & Exports; the period of suspension should also be limited. At present, the licensing authorities, in such situations, write to the authorised dealers and the Customs to stop the remittance and the clearance of goods. Acting on such requests, without their having the necessary statutory backing, might present legal difficulties. Doubts have also sometime arisen whether cancellation of licence in such a case has retrospective effect. It is desirable, by way of abundant caution, that suitable changes in the law are made to make the position clear that the cancellation of a licence obtained on fraud or mis-representation is retrospective in its operation. Another aspect worth mentioning in this connection is that intimation regarding cancellation of the licences is periodically sent to the Customs authorities and the authorised dealers. Considering the large number of licences cancelled, and in order that a cancellation is not lost sight of by the Customs authorities or the authorised dealers, it

may be worthwhile if a list of the licences cancelled or suspended is compiled alphabetically according to the names of the licensees every week or fortnight. Every such list should be a consolidated one incorporating the previous lists.

Check against issu of licences for excess value..

4.25 The cases of the fourth type mentioned in para 4.19 are those where import licences are issued for a value higher than what they should have been issued for. This could happen if the unit value of the goods is over-stated in the application for the licence or the overall requirements of the licensee are misjudged. We gather that, for the purpose of determining the licence value, the unit value of the goods is taken into account. Since the value of the goods essentially depends upon the nature, quality and source of the goods, and since this data is not available at the licensing stage, any effective check of the unit values at that stage does not seem to be feasible. But this aspect is relevant and has necessarily to be kept in view by the sponsoring and the licensing authorities for the purpose of deciding upon the value of the licence. It cannot be over-emphasised that both the sponsoring and the licensing authorities should take meticulous care to ensure that a license is not issued for a value higher than needed. Such care is necessary for the reason that if the licence is issued for a higher value, it will facilitate over-invoicing of the goods, or enable the licensee to import more goods than necessary and divert the excess goods to unauthorised channels. It was suggested to us that specifying the quantities of the goods in the licence may prevent the licensee from importing more goods than required by him. Quantity as a limiting factor may have some merit in preventing under-invoicing. Besides, specifying of quantities will bring in inflexibility inconveniencing the trade and may also perhaps be difficult for the licensing authorities. We suggest that inclusion of quantity as a limiting factor in licences may be considered for goods which have a high margin of profit in India and where temptation exists for bringing more goods by under-invoicing. In essence, we understand that this is being done at present in respect of few sensitive items and the problem of inflexibility is taken care of to some extent by permitting upto 10 per cent excess over the specified quantity within the overall value limit of the licence.

Remittances against import of worthless goods or without import of any goods.

4.26 As mentioned earlier, except in the case of advance remittances, payments are made only against shipping documents, and shipping documents would imply that some packages have been put on board the vessel, which in the normal course would be imported into India. It can be reasonably assumed that since most of the imported goods carry a high margin of profit in India, which is more than the difference between the authorised and unauthorised rates of exchange, generally no importer would like to misutilise his licence for the purpose of sending a remittance without importing the corresponding goods. However, in respect of commodities which are under open general licences, or which are liberally licensable and non-dutiable, and which do not carry a high margin of profit in India, one could use the licence for sending remittances and importing worthless goods or goods which are over-valued. In such cases, on the shipping documents, goods may be shown to be in accordance with the licence, but what is actually shipped will be worthless goods. The importer has no hesitation in abandoning such goods, which are of no value. He accordingly does not file a bill of entry, and in the normal course, Customs do not come to know of the importation of such worthless goods against a valuable remittance. The authorised dealers, through whom the

remittance was made also, under the existing system, would not be aware whether any goods against the said remittance have arrived in India or not. In a very limited sphere, the possibility of sending remittances without importing any goods at all also exists. This possibility arises where advance remittances are allowed, but even there the chances appear to be remote. Advance remittances are generally allowed by the authorised dealers against import licences for capital goods and machinery and heavy electrical plants. But the parties who import such capital equipment are well recognised importers of status, and are not likely to take recourse to this method for sending remittances abroad; secondly, the advance remittance is only a small percentage of the licence value, and it may not be worthwhile wasting the entire licence for remittance of this small percentage.

4.27 It was suggested to us that remittance should be allowed only after the goods have been actually imported. Such a step, being contrary to the normal international trade and banking practices, should not, in our view, be taken.

4.28 The Working Group of the Administrative Reforms Commission recommended that it should be made obligatory on the part of the importers who make the remittance for imports to submit the exchange control copy of the customs bill of entry (Bill of Entry is submitted to Customs for clearance of imported goods in quadruplicate, and the last copy is the exchange control copy) to the authorised dealer within a stipulated period, as evidence to show that against the remittance made, goods have arrived in India. It was represented by the Reserve Bank that insistence on the production of the exchange control copy of the bill of entry in each and every case to the authorised dealers, and for the latter to ensure that matching imports have been made against the remittance, would involve considerable extra work for the authorised dealers. While we agree that it may not be worthwhile to insist on the production of the exchange control copy of the bill of entry to the authorised dealers in each and every case, it will be desirable to do so in all those cases where either the payment has been made in advance and not against shipping documents or where remittances are made against open general licence or in respect of commodities which are freely licensable and are free of duty or not dutiable on ad valorem basis. The number of such commodities is not large.

4.29 Production of the exchange control copy has, however, limited value; the exchange control copy of the bill of entry would indicate the details according to the invoice and other documents, but would not indicate the results of the physical examination of the goods. Therefore, the exchange control copy of the bill of entry may be an evidence for showing that some goods have been imported into India, but from that copy, it would not be possible to ascertain the exact goods which have been physically imported. The results of the physical examination of the goods are available on the duplicate copy of the bill of entry only. In these circumstances, in addition to the production of the exchange control copy, it is necessary to devise other checks for finding out whether against the remittance made, matching imports have been made or not.

4.30 The problem needs to be tackled in several ways. In the first place, as suggested by us, the authorised dealers should insist on the production of the exchange control copy of the bill of entry in respect of advance remittances, remittances against open general licences and remittances in respect of other commodities which are vulnerable to over-invoicing. If the exchange control copy of the bill of entry is not submitted within a stipulated period, the authorised dealers should report the matter to the Reserve Bank who, in turn, will refer the matter to the Foreign Exchange Enforcement Directorate for necessary action.

4.31 Secondly, we would suggest that in addition to the usual checks by the Manifest Clearance Department of the Customs, the import general manifest should also be scrutinised with a view to taking follow up action in respect of consignments of worthless goods which are abandoned. Such scrutiny would isolate those line numbers against which no bills of entry are filled within a specified period. Even the packages in which worthless goods are imported would find a place in the manifest, and since no bill of entry would have been filed in respect of those packages, they would get isolated on such scrutiny of the import manifest. The next problem is to trace the person who imported such a consignment so as to be able to proceed against him. In many a cases the particulars of the importer may be available in the bill of lading, copy of which can be collected from the steamer agents. Sometimes the bill of lading will not contain such particulars. For that the first thing that can be done is to have the Reserve Bank issue instructions to the authorised dealers to ensure that the letters of credit have a specific stipulation to the effect that the payment would not be made to the foreign supplier unless the bill of lading clearly specifies the name and address of the importer in India, and the name of the authorised dealer. If that is done, the copy of the bill of lading with the steamer agent would also have those details, from which the Customs will be able to trace the importer. If necessary, the negotiating bank mentioned in the bill of lading could be contacted to find out the name of the supplier abroad, and other details regarding the remittance. It might help investigations if the payments are not received by the authorised dealers from the importers in cash, but only against cheques issued on the account of the importer. (We understand that Reserve Bank has recently issued necessary instructions to the authorised dealers in this regard). This should take care of the position in respect of the goods which are imported against letters of credit. Where the bills are received for collection some alternative method has to be evolved. The authorised dealers could send every month a tabular statement giving the details of the remittances, the name of the person making the payment, the bill of lading number and the vessel's name and voyage. In cases isolated on the scrutiny of the manifest where no bills of entry are filed, and where the names of the importers are not indicated on the copy of the bill of lading, available with the steamer agents, the Customs could find out the name of the importer and the authorised dealer with reference to the details given in these tabular statements. Once these details are known, investigations could be pursued further with a view to taking suitable action against the offenders who made remittances against the import licences and in return imported worthless goods.

4.32 Thirdly, each Custom House should have a small unit which could take stock of the abandoned goods and initiate enquiries to trace the person who imported the goods with a view to taking necessary action against him. At present, the Custom Houses have no machinery for this purpose. It is true that such a task would be beset with numerous difficulties: marks and numbers on the packages might be obliterated, goods may be pilfered, or the packages may not show the name of the vessel and its voyage. However, if there is a systematic stock taking of such abandoned goods, and there is a quick follow-up action in such cases, importers will not take with impunity the risk of importing worthless goods and abandoning them.

4.33 We believe that the three-fold approach to the problem outlined above, namely, (i) production of the bill of entry to the authorised dealers for commodities which are vulnerable to over-invoicing; (ii) scrutiny of the manifest; and (iii) a regular follow-up action with regard to abandoned goods; should provide a fairly effective system for pursuing the cases where valuable remittances are made against import of worthless goods. These cases, after detection, should be reported to the Reserve Bank and the Foreign Exchange Enforcement Directorate for taking necessary penal action.

Amendment of Section 4(3) F.E.R.

4.34 Under Section 4(3) of the Foreign Exchange Regulation Act where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose. If he is not able to do so, he is required to sell without delay such foreign exchange to an authorised dealer. The importer acquires foreign exchange for the specific purpose of importing certain goods. If he does not import those goods and instead imports worthless goods, in our opinion, he is contravening the aforesaid provision of the foreign exchange law. However, to put the matter beyond any doubt, an explanation may be added in this provision to the effect that if a person does not import the goods for which he acquired the foreign exchange and made the remittance, it shall be presumed that he has used the foreign exchange so acquired for a purpose other than that for which the foreign exchange was released.

Over-invoicing of imports.

4.35 Instead of importing worthless goods, an importer may over-invoice his goods and secrete the extra remittance abroad. In such cases, generally the importer would file a bill of entry and, accordingly, the value of the goods would be subject to scrutiny by the Customs authorities. The responsibility of the Customs authorities is to ensure correct valuation in every respect. However, being primarily revenue officers, they are understandably meticulous in checking values from the customs duty angle, and look with particular care at values with a view to detecting under-invoicing in imports which entails loss of customs duty. Therefore, unless the importance of checking values from all angles, including the foreign exchange angle, is emphasised upon them, they are likely to miss cases of over-invoicing of imports. Reorientation of approach on the part of the Customs authorities in this regard is called for. Suitable instructions should be issued to the Customs authorities to make it clear that the stress should be on the correct valuation of the goods from all angles, and any deviation from the correct value unless it is marginal and bonafide, should be viewed seriously

irrespective of whether it is a case of under-invoicing or over-invoicing and whether it is harmful from the point of view of customs duty or foreign exchange or any prohibition.

Check by Customs.

4.36 The valuation check by Customs is both documentary and physical; they scrutinise the import documents, such as indent, acceptance, sale note or contract, invoice, bill of exchange, and also compare the prices with the price list or the value of the goods of like kind and quality, if available. They also examine physically the goods on a selective and random basis to ascertain the quality of goods and also to verify that the goods conform to the particulars as shown in the documents. The extent of physical examination differs from commodity to commodity. The import appraising units of the Custom Houses are divided into various groups, and each group deals with certain specified commodities only. Since a particular officer deals with specified commodities for some time, he develops expertise regarding the valuation of those commodities. Some of these officers are recruited as experts in particular commodities. On the import side, the Custom Houses have also special valuation units to examine the books of accounts of firms who have special relationships with suppliers abroad with a view to finding out the effect of such relationships on the values of goods imported. Thus, by and large, Customs have an efficient and competent machinery for checking the values of the imported goods.

Need for production of bank attested invoices.

4.37 It has been noticed that, except in cases of doubt, generally the Customs authorities do not insist on the production of the invoice attested by the authorised dealer through whom the payment for imports is made. It is gathered that, at times, bills of entry are filed by the importers on the basis of the invoices directly received by them even before they have retired the documents from the bank. We feel that the Customs appraising officers should know the amount of remittance which has been made, or will be made against the goods. This would provide an opportunity for verifying that the value of the goods imported is in accordance with the amount of remittance made or to be made against those goods. We suggest that in each and every case, the Customs appraising officers should insist on the production of the bank attested invoice before finalising the bill of entry. To facilitate this the Reserve Bank should issue instructions to the authorised dealers to furnish an attested copy of the invoice to the importer without waiting for the actual retiring of the documents.

4.38 One of the important functions of the appraising officer is to collect market intelligence for the purpose of valuation of goods. He is also required to maintain a register of values of goods cleared through him or through his group. He is also required to keep himself in constant touch with the market but in view of the paucity of time available to him, he is not always able to do so. Thus, on the whole, collection of information under the present system, depends mainly on the personal initiative of the individual officer. It is no doubt essential that the individual appraising officers should keep in close touch with the market and to that extent the importance of market enquiries by them cannot be minimised. Their initiative in this regard is necessary and has to be encouraged. However, in our view, it needs to be supplemented by a systematic

and regular inflow of information. For that purpose, it is necessary that there should be a regular system for collection of valuation data from different sources in India and abroad and its dissemination to the concerned appraising officers. We, therefore, recommend formation of a Special Valuation Cell for this purpose, the functions and working of which we have outlined in chapter VI.

Areas vulnerable to over-invoicing on import.

4.39 As mentioned in chapter III, from the point of view of over-invoicing, there are three areas of import which are particularly vulnerable to invoice manipulation: (i) capital goods and machinery; (ii) goods which are covered by an open general licence, or which are liberally licensable; and (iii) goods which are either free of duty or liable to low rate of duty or not chargeable to duty on ad valorem basis. Some items included in the last two categories are books, hides and skins, cotton, raw jute.

Valuation of capital goods.

4.40 Valuation of capital goods and machinery presents several difficulties. As far as standard equipments are concerned, there is less difficulty in valuing such goods, since comparative values of goods of like kind are available. With the advancement of modern technology and the sophistication of our own industry, a large variety of specialised equipment are now imported; and for any general machinery expert - such as the Custom Houses have - to assess their value is indeed difficult. Most of the heavy plants and machinery ordered are made to particular specifications, and are a class by themselves and comparison with the values of the like goods is generally not possible. In the circumstances, the question as to what can be done to check the values of such capital goods and machinery is very difficult to ensure. One thing that occurs to us is that there could be some valuation check at the licence sponsoring stage by the experts. It is true that even for D. G. T. D. it may not be easy to assess the value of non-standard machinery, capital goods and heavy electrical plants. But in view of the greater expertise available with them, they should be in a better position to check these values. This, of course, does not imply that the Customs authorities will not exercise any valuation check. Further, as we have observed in chapter III, it will be desirable that before issuing an import licence for such equipment, tenders are invited or quotations obtained so that an idea could be had as to the values of comparable equipment emanating from different sources. This would enable the sponsoring and the licensing authorities to select the quality of the equipment and the source of supply and indirectly also provide a valuation check. Since most of the licences for heavy plants and capital equipment are issued under specific foreign aid loans, and the goods have necessarily to be imported from a particular country or area, it may not be possible to invite global tenders. Tenders can, however, be invited or quotations obtained from different sources from the particular area or the country from which such imports have to be made. Free foreign exchange is not usually released for such imports. When this is done global tenders should be insisted on. The obligation for inviting tenders or obtaining quotations can be limited to cases where the value of the machinery or the plant to be imported exceeds a particular ceiling. The services of our officers to be stationed abroad for supplying valuation data regarding which proposals have been made in chapter VI, could also be utilised for making discreet enquiries regarding the values of such goods.

Manipulation in freight.

4.41 It has been brought to our notice that a substantial amount of foreign exchange is being lost on account of higher freight paid on imports of machinery. The manufacturers/suppliers abroad over-estimate the cost of freight to keep a safety margin as well as to provide for any future increase in freight rates or other changes. Further, the suppliers also get a rebate in freight which they very rarely pass on to the Indian importer. They do not take this rebate into account while fixing the C.I.F. value of the goods. We would, therefore, suggest that foreign exchange for import of machinery and that for freight and insurance should be released separately. The applicants intending to import machinery should be required to furnish invoices indicating separately the F.O.B. value and the freight and insurance. Based on such invoices, where practicable, the capital goods licence should mention not only the C.I.F. value of the machinery sought to be imported, but also by a separate endorsement, indicate that the freight and insurance payable shall not exceed a given amount to be specified in the licence, or the actual freight or insurance charges, whichever is lower. This would enable the Customs and the Exchange Control authorities to ensure with reference to the shipping documents, that the remittances and the debits to the licences on account of freight and insurance do not exceed the amount actually paid to the shipping company and the insurance company.

Valuation of other goods.

4.42 As regards valuation of goods (other than capital goods and machinery) vulnerable to over-invoicing on import, it is not so much a question of lack of expertise as that of training and approach. Proper valuation demands (i) knowledge about different qualities of the goods; and (ii) knowledge of the prices of the different qualities. Customs officers do acquire knowledge regarding both the aspects by experience but for valuation of particular commodities, some training could be useful. For instance, in the case of hides and skins, we have suggested in chapter III that the appraising officers should be given training with regard to the various qualities of hides and skins in order to enable them to make proper valuation. The valuation check should further be improved by providing a continuous inflow of information from abroad and locally to the concerned officers. The special valuation cells suggested by us could be expected to supply regular information to the appraising officers.

Lacuna in the law.

4.43 We have already emphasised the necessity and importance of having correct valuation in all its aspects, and from all angles. Misdeclaration of value or false invoicing has to be viewed seriously. We notice, however, that neither in the Customs Act nor in the Foreign Exchange Regulation Act, is there any provision which clearly makes over-invoicing of imports an offence. The Customs Act, 1962 makes dutiable or prohibited goods imported into India liable to confiscation if they do not correspond in any material particular with the entry or declaration made by the importer under the said Act. It could be argued that the liability to confiscation arises only where there is a misdeclaration with regard to a particular which is material from the point of view of duty or prohibition. In the case of over-invoicing of imports, since the importer is required to pay more duty and produces licence for a higher value, it could be contended that incorrect valuation is not material either from the point of view of duty or prohibition. As discussed in para 4.34, section 4(3) of the Foreign Exchange Regulation Act, as worded, might be applicable in specific

situations, but does not directly deal with over-invoicing of imports. There is also no other provision in the Foreign Exchange Regulation Act which makes over-invoicing of imports an offence. There is, thus, a lacuna in the law. We recommend that to remove this lacuna, appropriate statutory provision should be made.

Amendment of Section 112 of the Customs Act.

4.44 Under Section 112 of the Customs Act, 1962, any person who in relation to goods liable to confiscation, does or omits to do any act which renders such goods liable to confiscation, or who deals with those goods in any manner knowing their liability to confiscation, may be subjected to a penalty not exceeding five times the value of the goods or the duty sought to be evaded, depending upon whether it is a case of prohibition or duty. In the case of goods over-invoiced on import, no duty is evaded, and a penalty having relation to the correct value of such goods may not be an adequate punishment. In fact, where the goods are over-invoiced by a large margin, the correct value of the goods would be very low, and a penalty having relation to such value would be totally inadequate. We suggest that this section should be amended to provide that the penalty imposable should also be related to the extent of misdeclaration of value that is to say upto five times the diff rence between the correct and the invoiced value.

Imports against forged licences and remittances against forged bills of lading.

4.45 Besides the malpractices discussed above, there have been cases where imports were made against forged import licences. The possibility of bills of lading also being forged cannot be ruled out. There cannot be a system by which such manipulations can be prevented. However, such cases underline the need on the part of the authorised dealers, and the Customs authorities, of exercising greater care and vigilance in allowing remittances or permitting clearance of the goods. They should satisfy themselves that the import licence against which the remittance is being sought or clearance requested was validly issued by a competent authority. This they can do by checking the details of the licences with the lists of licences published by the office of the Chief Controller of Imports and Exports, who should make it a point to circulate these in time.

CHAPTER—V

EXPORT VALUATION

5.1 Export valuation has two facets - one relates to valuation for the purposes of Customs Act, particularly where export duty is involved, and the other to ensuring repatriation of the full export value of the goods under the Foreign Exchange Regulation Act. Export duty is leviable on not too many items - the total number of items was 34 in 1969-70 and, therefore, export valuation for the purpose of levy of export duty has limited scope. All goods exported, however, are required to be valued from the foreign exchange angle. It may be relevant to mention that Customs appraising officers, being primarily revenue officers, pay greater attention to the valuation for the purpose of levy of customs duty than to the valuation from the foreign exchange point of view. Further, for dutiable shipping bills, the original appraisement is done by the appraiser, and this is checked by the Assistant Collector. But in respect of non-dutiable shipping bills, the original valuation is done at the level of the examiner and the re-check is done by the appraiser. It hardly needs to be emphasized that valuation check from the point of view of realisation of foreign exchange is as important as that for the purpose of duty collection. We have, elsewhere, stressed the importance of having correct valuation from all angles for the goods imported. This would equally apply to valuation of goods exported. It is the primary responsibility of the Customs authorities to ensure in all cases that the values of the goods imported and exported are correct, irrespective of whether valuation is made for the purposes of levying of customs duty, or from the foreign exchange angle. Reorientation of outlook and approach on the part of the Customs appraising officers in this regard seems necessary. We would suggest that suitable instructions should be issued emphasizing on Customs officers the importance of a careful valuation check in all respects keeping well in the forefront the foreign exchange angle also. We would recommend that the valuation check should be exercised, even at the primary level, preferably by an appraiser and not by an examiner.

Scheme of Exchange Control.

5.2 Control over the realisation of the foreign exchange proceeds of the goods exported is exercised in two stages: (i) at the time of export of the goods; and (ii) at the stage of repatriation of the sale proceeds from abroad. Though under the Foreign Exchange Law the overall responsibility for the realisation of the foreign exchange is that of the Reserve Bank, broadly speaking, the Customs are concerned with control at the stage of export, and the Reserve Bank at the stage of repatriation. All discounts and rebates should be within the province of Customs to allow. We are clear, however, that allowing agency commissions and 'overpricing' must remain the prerogative of the Reserve Bank. This is elaborated later.

5.3 The scheme of the Foreign Exchange Regulation Act envisages a prohibition on the export of all goods, subject to certain exceptions,

unless the exporter furnishes to the Collector of Customs (the prescribed authority) a declaration in the prescribed form. The declaration is to be given in two respects: (i) a declaration regarding the full export value of the goods, or the expected sale value, if the full export value is not ascertainable at that stage; and (ii) affirmation that the full export value has been realised or will be realised within the prescribed period and in the prescribed manner (i.e. through authorised channels and according to the prescribed mode of payment, such as the relevant currency). The prohibition is lifted only if the declaration is true in all material particulars including value, and is supported by such evidence as may be prescribed or specified. This prohibition is imposed by Section 12(1) of the Foreign Exchange Regulation Act, and by virtue of Section 23A of the same Act, it is deemed to have been imposed under Section 11 of the Customs Act, 1962, and all the provisions of the Customs Act apply accordingly. Any attempt to export goods in contravention of this prohibition entails serious consequences. In addition to the liability of the goods to confiscation under the Customs Act, the person concerned in the offence may be subjected to a penalty which could be upto five times the value of the goods. In addition, the person contravening the law may be prosecuted under the provisions of the Foreign Exchange Regulation Act.

Need for a proper declaration.

5.4 The declaration is required to be given on a prescribed form. The main forms prescribed for the purpose are known as PP, EP and GR-1 forms. The prescribed forms, apart from other headings, have columns for the name of the vessel, the name of the exporter, the rupee-value of the goods, the invoice value of the goods, indicating separately the F.O.B. value, the freight and insurance and the commissions/discounts/over-pricing payable. It has been noticed that all the columns are, sometimes, not properly filled and, where a particular column is not applicable, this is not stated. In such cases, the picture regarding net realisation gets blurred and it may be possible to manipulate the net value by securing deductions on account of discounts etc. at the stage of repatriation of the sale proceeds. It is our view that it should be compulsory that the exporter fills each single column specifically, and where no discount or commission or any other deduction is to be made in favour of the foreign buyer, he should specifically state this in the prescribed form. As for discounts and other deductions, except those that arise at a later stage, these must be entered in the form and the Customs authorities should indicate whether they have allowed those discounts or deductions or not. Although the power to allow agency commission is with the Reserve Bank, whatever has been allowed or is asked for, must also be entered in the prescribed form. No deduction on account of discount should be permitted either by the Reserve Bank or the authorised dealers at a later stage unless these have been declared by the exporter in the prescribed form and accepted by the Customs authorities. The Reserve Bank should not allow any remittance on account of agency commission unless this has been shown in the relative form. Even in exceptional cases, the Reserve Bank should not permit a remittance for agency commission which has not

been entered in the form without consulting the Customs authorities, unless the rate of commission sought to be remitted is small, and it is covered by an agreement already registered or approved by the Reserve Bank. This consultation is necessary because the Customs authorities, for the purpose of check of value, are concerned with the net realisation. In cases where the commission is not shown in the prescribed form, the Customs judgment with regard to value would be based on wrong premises, particularly in cases where the commission includes payment for post-export services. Such consultation would enable the Customs authorities to have a second look at their judgment regarding the acceptability of the full export value, after taking into consideration the element of commission sought to be remitted. Where the commission has already been deducted from the value declared, the question of allowing any remittance on this account should not arise. Some verification in this regard would, therefore, be necessary when dealing with a request for remittance on account of agency commission.

Scrutiny of the declaration.

5.5 A proper scrutiny of the prescribed form would mean checking the following aspects: (i) whether the value declared in the form is correct; (ii) whether destination shown is the correct destination of the goods; (iii) whether the person signing the declaration is the exporter of the goods; (iv) whether the declaration that the goods are being sent on outright sale basis or on consignment basis is correct; and (v) whether there is a proper undertaking to the effect that the full export value of the goods will be realised in the prescribed manner, and within the prescribed period. All these aspects are important and a mis-declaration in respect of any of these might result in leakage of foreign exchange. A mis-declaration as to value may be in respect of the F.O.B. value, the freight, insurance, or discount, rebate, or other deductions, any of which, will obviously spell loss of foreign exchange. If the destination is shown incorrectly, this may have been done with a view to diverting the goods from a rupee-payment country to free foreign exchange area, which, from the foreign exchange angle, is harmful. If the person signing the declaration is not the exporter, the declaration is valueless rendering the control over the subsequent realisation of foreign exchange proceeds difficult. By declaring an export made on consignment basis as one on outright sale basis, the exporter can evade accountability to the Reserve Bank for the final sale value. Conversely, outright sales may be shown as consignment exports, and final account sales manipulated.

5.6. The question for consideration is whether these checks are adequately exercised. In the system, which is functioning at present, it cannot really be said that these checks are being effectively exercised. Broadly, the reasons are: inadequacy of staff and paucity of time available to the appraising officers for checking values, lack of expertise of the required type, absence of proper training facilities for appraising officers and want of a regular system for collection and dissemination of valuation data, and inadequate attention being given to the foreign exchange aspect as compared to revenue consideration.

Strengthening of Export Valuation Deptt.

5.7 The following statistics will give an idea of the workload on the examiners and the appraisers entrusted with checking of export values :-

Shipping Bills (Foreign) 1969-70

	Bombay	Calcutta	Madras	Cochin	Total
Dutiable	30,814	61,541	14,899	8,590	1,15,844
Free	2,63,272	78,729	24,181	14,986	3,81,168

Strength of Export Department in Various Custom Houses

Custom House	Asstt. Collectors	Appraisers	Examiners
Bombay	1	4	10
Calcutta	3	7	6
Madras	1	2	2
Cochin	1	2	3

The staff employed for checking the values of export goods is clearly inadequate. We recommend that the staff requirement of the Export Valuation Department should be re-assessed keeping in view the meticulous check to be exercised by the officers of the values from all angles including from the point of view of foreign exchange realisation. We feel that the Export Valuation Departments of all Custom Houses need to be considerably strengthened.

5.8 On the import side, there are various specialist groups dealing with the appraisement of different commodities. On the export side, there is no such specialisation. From the point of view of foreign exchange control, check on values of export goods cannot be considered in any way less important than that of imported goods. On the other hand, with the increasing exports and having regard to the country's need of foreign exchange, greater emphasis on the valuation of exports is necessary. We recommend that on the pattern of the import appraising groups, the Export Department should also have specialist groups dealing with specified commodities and some of the officers manning these groups should be recruited as experts in the particular lines of trade.

Special valuation branch for exports.

5.9 On the import side, the Customs have a special branch which examines the books of account of the importers who have special relationship or some financial tie with the supplier of the goods abroad. On such examination, if the special branch finds that the invoice value of the goods is not in accordance with the provisions of the Customs Act, it issues instructions to the assessing officers to load the invoice values by a certain percentage for the purpose of collection of duty.

On the export side, there is no such special branch. We recommend that on the export side also, there should be a similar special branch which should go into the books of account of those exporters who have special relationships with the parties abroad. This branch would be able to advise the assessing officers as to the impact of the special relationship on the values of the goods, and whether the invoice values are concessional in any respect. It would also examine in such cases whether deviation, if any, from the normal price is due to genuine commercial considerations or to any special link between the parties. Further, this branch could also keep an eye on the reasonableness of the agency commissions, and over-pricing and if it comes across any material which would help the Reserve Bank in deciding upon the admissibility of the commission or over-pricing, this would prove to be a useful adjunct to the valuation system.

Training.

5.10 We also recommend that the officers concerned with the valuation of export goods should be given training with regard to the technology, know-how, commercial practices and the qualities of the commodities with which they are concerned. This training should be given periodically. Such training would enable the officers to keep themselves abreast of the technological developments and market trends of a particular commodity. The knowledge thus acquired would add to their expertise and would help them in determining the value more accurately.

Posting of officers.

5.11 It has been noticed that appraising officers are frequently transferred. This, in our opinion, is not desirable. We recommend that the officers concerned with the valuation of export goods should not be frequently transferred from one post to another. It does take some time for an officer to acquaint himself with the problems of valuation of a particular commodity, and if he is frequently transferred, this will prevent him from developing adequate expertise with regard to the valuation of any particular commodity. We suggest that unless there are doubts about the integrity of a person, or about his competence for discharging the responsibility for a particular assignment, he should be retained in a group for a reasonably long period of time so that the benefit of the expertise acquired in the course of time is fruitfully utilised.

Valuation Cell.

5.12 In order to enable the Customs appraising officers to make a proper valuation check of the goods brought for export, it is necessary that they have adequate powers and means at their disposal. As already mentioned, the Customs officers gather market intelligence, as and when necessary, and also keep a register of values of the goods passing through them. But there is no regular system, as such, for collection, recording, collation and dissemination of the valuation data. Particularly, there is no regular inflow of information from the important purchasing centres of our goods abroad. This information is vital for determining the international value of our export goods. Even with regard to local sources, either because of paucity of time available to the appraising officers or because of lack of co-ordination, there is no proper system, as such, for collection of information. Much depends on the personal initiative of the

officer concerned. We have suggested, elsewhere, the setting up of a special valuation cell for collecting valuation data from different sources, indigenous and abroad, collating and digesting this and disseminating it to the appraising officers in a form intelligible and convenient for their purposes. We have outlined the organization and functions of this valuation cell in the subsequent chapter. The valuation cell would not, however, be a substitute for the market enquiries which the individual concerned officer would make in the normal course. It would only supplement the personal initiative of the appraising officer, and make him better equipped for determining the value of the goods.

Documentary Check.

5.13 The value of the goods has to be determined in relation to the overall terms of the contract. For the same goods, values can differ to some extent, depending upon the differing terms of contract. For instance, the values may differ because of the varying quantities of goods covered by the contract. Values may also differ depending upon the conditions of payment. To illustrate, where the contract has a rise and fall clause depending upon the cost of certain services or charges in India, one cannot fix the value properly without taking into account the variation in such cost from time to time. It is, therefore, of the utmost importance that Customs officers should examine the terms of the contract with meticulous care and then take a view about the correctness of the declared value.

5.14 Valuation check should not be confined to the checking of the unit value of the goods but should also include a check of other elements such as freight and insurance which go into the making of C.I.F. value. In C.I.F. contracts, freight constitutes an important ingredient of the value and, therefore, verification of the freight amount is of considerable signficance. Our study has revealed that sufficient emphasis is not placed on the scrutiny of these elements. The valuation in this respect is inadequately done. We feel, it is necessary to bring home to the Customs officers the significance of scrutiny and verification of freight and insurance. For this purpose, they may have to examine not only the freight sheets but the terms of the charter party or terms relating to despatch/demurrage which affect the quantum of freight.

5.15 It has been noticed that sometimes excessive discounts are claimed by the exporters and these are accepted without properly examining their reasonableness. Manipulation regarding the quantum of discount has the same effect as the manipulation of the value itself. Eventually, it is the net realisation which matters. Customs authorities should, therefore, ensure that the net value, after deduction of the discount/commission/rebate or any other deduction, is the proper and correct value of the goods. We have already mentioned that every kind of deduction should be reflected in the GR form to enable the Customs and the Reserve Bank not only to decide upon the admissibility or reasonableness of such deductions but also to arrive at a finding whether the net value after such deductions truly reflects the full export

value of the goods or not. Value divorced from those deductions or factors may present a totally misleading picture.

Physical examination.

5.16 The documentary check of values is incomplete without a physical examination of the goods. Values of the goods have relation to their quality and quantity, and this cannot always be ascertained without physical examination of the goods. As we have observed in relation to imports, much better correlation appears to be necessary between documentary and physical check. There is also need for a more intelligent and planned selectivity in ordering physical examination of the goods having regard to the commodity, the exporter, the nature of the transaction and the destination. We suggest that in those cases where the physical examination has disclosed any discrepancy in the declaration of the exporter, a record should be maintained of the results of such examination. These results should be constantly reviewed at a high level in the Custom House with a view to evolving a more planned direction with regard to the physical check of goods. The percentage and the extent of check could be varied from time to time depending upon the vulnerability to invoice manipulation of particular commodities at the relevant time. Selectivity in ordering physical examination of the goods could also be based on the past performance of a particular exporter. The idea is that instead of physical examination of the goods in a routine fashion, the examination should be more intelligent, selective and purposeful.

5.17 We also recommend that the Customs authorities should have a better liaison and co-ordination with the Export Inspection Council. The Export Inspection Council exercises a quality check on the goods. This quality check is done at different stages for different commodities. For some manufactured goods, the check is at the processing stage, whereas for others, it is either after the goods are manufactured or at the stage when they are ready for export. The inspection by Council is confined to check of quality for purposes of Export (Quality Control & Inspection) Act of 1964. While quality is an important relevant factor, the Customs examination has to cover various other aspects for purposes of the Customs Act, Imports & Exports (Control) Act, Marks & Merchandise Act and several other laws. If the requirements of the Customs examination are dovetailed with the inspection by the Council, which it should be possible to do in a large measure, this will serve a very useful purpose and extensive checks by Customs separately could be reduced and hold up of exports avoided. In such an arrangement, steps will also have to be taken to ensure that there is no substitution of goods after the inspection by the Council.

5.18 Customs should also evolve a policy with regard to drawing and retention of samples for post-export scrutiny. In the nature of things, it will not be possible to retain samples for all the goods exported. A study should be made of the commodities which are vulnerable from the point of view of under-invoicing with a view to

evolving a policy of the kind and frequency of samples to be retained for post export scrutiny.

Full export value.

5.19 The term "full export value" is not defined in the Foreign Exchange Regulation Act. The Study Team accordingly examined at some length the question whether this term could be defined or elaborated with greater precision. Different views were expressed with regard to its meaning and scope. One view was that the full export value was the best obtainable price at the relevant time for comparable goods sold in similar circumstances. In this connection, reference was also made to the relevant provision of the English Exchange Control Act which prohibits the export of the goods unless the value declared is 'the return for the goods which is in all the circumstances satisfactory in the national interest to the satisfaction of the Commissioners of Customs.' It was felt that a definition on the lines of the English Exchange Control Law, being too subjective, might not stand the test of our constitutional requirements. The concept of the best obtainable price, apart from the practical difficulties involved in its implementation, is too vague and might result in an innocent exporter being penalised merely on the ground that he had bona fide agreed to sell goods at a price little lower than that at which others had exported similar goods. Another view was that the 'full export value' should be defined on the lines of Section 14 of the Customs Act. The Customs definition speaks of the value at which the goods are ordinarily sold or offered for sale in the course of international trade where the seller and buyer are independent of each other and there is no other collateral consideration for the goods. Though some of these ingredients would necessarily be there in the concept of "full export value" also, the Customs definition postulates a deemed value - a value which may not necessarily be the same as the actual value in a particular transaction. Obiviously, no foreign buyer who is not related to the exporter, would pay more for the goods than the price at which he has agreed to purchase the goods. Therefore, to expect from an exporter that he should bring back some notional or deemed value other than that for which the goods had been sold would be an impossible position. Moreover, in the context of our growing trade, which still needs to be nurtured, and having regard to the need for some flexibility in our pricing owing to the stiff competition which our exports face in the world market, any rigid or artificial approach in delimiting the scope of the term 'full export value' may not be desirable, We are, however, conscious of the fact that in not defining this term, the danger is that even the price in transactions which are collusive or the result of special arrangement may be claimed to be the full export value of the goods. We felt that while in the generality of cases the transaction value would be the full export value of the goods and, therefore, a definition of this expression is not necessary. For the type of cases where the absence of the definition could cause difficulty and might lead to leakage of foreign exchange, we feel there should be some

power with the Government to appropriately deal with these. We are elaborating this aspect in the following three paragraphs.

5.20 With all the expertise and the means at the disposal of the Customs authorities and even taking into consideration the improvements we have suggested, we are conscious that detection of under-invoicing is a difficult task. Valuation of such a large number of commodities, having numerous varieties, consigned to different destinations, coupled with market fluctuations, and variations on account of conditions of trade, and nature of the transactions, is a complex problem. But to establish the offence of under-valuation, even after a case is detected, is an even more difficult task. Cases where direct evidence is available to establish that the goods were actually sold for a price different from the one declared, cannot, in the very nature of things, be many. There would be cases where the Customs authorities are, on the basis of circumstantial evidence, convinced that the goods are under-valued but this evidence is not such as could be considered adequate to establish the offence of under-invoicing, To impose fines and penalties in such cases, apart from not being legally possible, may even otherwise be contrary to fundamental norms of justice. But we feel that in cases where the offence of under-invoicing cannot be legally established and yet the circumstances clearly indicate deliberately wrong values, it would not be proper to accept the values and allow the exports. This type of difficulty also arises where the sellers and the buyers are inter-related to each other and the price on the face of it is concessional and much lower as compared to the normal export price on which such goods are ordinarily sold in the course of international trade. It could also be that in pursuance of unhealthy business practices, the exporter deliberately keeps his price low and does not get a proper return for his goods. We recommend that for these categories of cases there should be power in law for Customs to prevent exports.

5.21 Under section 12(1) of the F.E.R.A. read with the rules and the relevant notifications, there is a prohibition on the export of goods if the full export value of the goods stated in the prescribed form is untrue and contravention of this prohibition entails penal consequences. This power can obviously be exercised only when there is adequate evidence to establish the offence and, therefore, this section would not cover the types of cases mentioned in the preceding paragraph. Section 12(5) of the F.E.R.A. gives power to the Reserve Bank, if the value as stated in the invoice is less than the amount which in the opinion of the Reserve Bank represents the full export value of the goods, to issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which represents, in the opinion of the Reserve Bank, the full export value of the goods. We have in mind a provision of this nature which could be

exercised at the appropriate stage by the Customs authorities. Section 12(5), in practical application, has a very limited utility and, in fact, we were told that so far this power had never been exercised by the Reserve Bank. The reasons for this are obvious. The Reserve Bank comes to know of the transaction only when the original GR form reaches it from Customs. Normally, therefore, the Reserve Bank would know of the invoice price much after the export of the goods by which time it is too late to issue an order under Section 12(5). We suggest that the power to prevent exports should vest in the Customs authorities through whom the export takes place and who could exercise this power at the appropriate stage. This power, subject to directions, if any, given by the Reserve Bank, should also extend to requiring any person holding the shipping documents to retain possession thereof until such time as the exporter has made arrangements for bringing back the amount which represents, in the opinion of the Customs authorities, the full export value of the goods. It is necessary at the same time to ensure that the power is not exercised arbitrarily and there is no hold-up of exports merely on suspicion or a difference of opinion, or other inadequate grounds. This power, therefore, should be entrusted to an officer not below the rank of a Deputy Collector of Customs. This decision must also be made subject to appeal and revision.

mendment f value.

5.22 Where the Customs authorities are of the view that the declared value is not the full export value of the goods, and the exporter is prepared to amend the value to bring it in conformity with the valuation of the Customs, it should be insisted that the exporter furnishes a revised contract and invoice. If for any reasons it is not possible to revise the contract, such as paucity of time available, the exporter should be required to furnish evidence to show that the buyer abroad is willing to pay the higher price. In the latter case, even where the contract is not revised, the invoice should be revised and made out for the higher value so that the repatriation is ensured at that higher value. The advantage of ensuring revision of the contract and/or invoice, or production of the evidence, would be to provide some guarantee that the higher sale proceeds will be received from the foreign buyer.

Post-export scrutiny.

5.23 Checking of values at the stage of export has one limitation. Quite often, the exporter presents the shipping bill to the Customs authorities at the last moment before the sailing of the vessel and there is not much time available for exercising any meticulous scrutiny regarding the values of the goods. Customs authorities, in the absence of any positive evidence controverting the declared value, and lest they should unnecessarily hold-up the shipment and frustrate the shipping schedule, almost always allow the shipment. Moreover, at that stage, the Customs authorities at one port are not aware of the prices declared at other ports for the same commodity. We recommend that there should be a system of post export scrutiny of the values. Such a system would also have the advantage that, apart from adequate time available for such scrutiny, the

officer concerned would have before him data regarding the export values of other transactions at the same and from other ports which would enable him to spot for further investigation abnormal deviation in values.

Legal cover for dealing with post-export detections.

5.24 Related to this aspect is the question of proper legal cover to deal with cases where evidence of under-invoicing comes to notice after export of goods. There appears to be no bar to taking action for contravention of section 12(1) of the F.E.R.A. even if the offence is detected after export. Doubts have been expressed as to whether Customs have power to take action for misdeclaration of value if the offence is detected two years after the export, in view of the limitation laid down in the Customs Act with regard to revision of the decision or order of a Customs officer. It is necessary that the legal position is made unambigious through legislation.

Exports on consignment basis.

5.25 Commercial exports broadly fall into two categories: (a) exports on outright sale basis; and (b) exports on consignment basis. The area of consignment exports is much smaller as compared to that of exports on outright sale basis (less than 5 per cent), but in course of time, with our expanding trade, it might become necessary to resort to this pattern of trade increasingly. In consignment exports, at the stage of export, only a provisional value, which the Indian exporter expects to receive on sale of the goods abroad, is indicated in the prescribed form. By the very nature of things, the final sale value of the goods abroad may quite often be different from the declared provisional value. The final sale value of the goods is accounted for to the Reserve Bank who ensure repatriation of this value after satisfying themselves about the genuineness of the 'account-sales' received by the exporter from his agent abroad.

5.26 In practice, what is done is to compare the final account sales with the value originally declared on the prescribed form and if the difference in the values appears to be wide, to call upon the exporter to explain the difference. On the exporter's explanation being found satisfactory, the values are accepted. In fact, even if the Reserve Bank is not satisfied with the explanation, it can hardly do anything in the matter unless it comes into possession of some evidence showing that the account sales sent by the agent abroad were manipulated. It may not be easy to secure such evidence.

5.27 We suggest that a provision should be made in the law empowering the Government to issue directions to the effect that the exporter will not sell goods exported on consignment basis at a price which is lower than the value declared at the stage of export by a specified margin, unless he obtains the permission of the Reserve Bank in advance for selling at a lower price. This percentage would obviously be different for different commodities. Such a provision would make it clear to the exporter, prior to export, that he cannot sell the goods abroad below a particular level. If the exporter makes a request to the Reserve

Bank that he is not able to obtain the price within the stipulated range, and he be allowed to sell the goods at a lower value, taking a decision on such a request would essentially be a matter relating to value determination. The Reserve Bank could usefully at that stage draw upon the expertise and the valuation data available with Customs in order to form a judgment as to whether the sale at the reduced price should be allowed or not, or whether the goods should be assigned to the Central Government or to some other person in terms of section 12(3) of the F.E.R.A. Help of officers of the Government of India posted abroad could also be taken in this regard. They could be asked to make enquiries on the spot and advise whether there was justification for selling the goods at the lower price as indicated in the exporter's application. In fact, some powers could be delegated to officers posted abroad to grant permission in such cases on the request of the foreign agent of the exporter. We need hardly emphasise that in order to enable the exporter to finalise his deal quickly, the decision on the request seeking permission for sale of the goods below the stipulated range, ought to be communicated to the exporter within the shortest possible time.

5.28 Any rigid approach in these matters might hamper the flow of export trade. Therefore, while forming a judgment regarding the acceptance of the final sale values, some flexibility of approach would be necessary. But at the same time, if it is noticed that consistently an exporter is selling his goods abroad below the provisional value declared by him at the stage of export or is seeking permission for sale at a reduced value too often, or that the facility of the consignment exports has led to wholesale abuse with reference to a particular commodity in the matter of its valuation, we would suggest that Government should have the clear authority not to permit export on consignment account of any particular commodity or by a particular class of exporters as may be notified. Government have, in the case of one commodity, namely, woollen carpets, prohibited exports on consignment basis. This has been done under the Export Trade Control Order. We are not sure that this is the appropriate regulation for this purpose, and feel that there should be legislative authority provided in the foreign exchange control law for this purpose, to be exercised, of course, with great circumspection.

5.29 We observe that in the Reserve Bank of India the checking of the final account sales of the consignment exports is done at comparatively junior level by persons who do not have necessary expertise in valuation techniques. This machinery needs to be considerably strengthened. In the changed set-up, when the valuation cell would have a regular flow of valuation data from abroad, as explained in the following chapter, it should be possible for the R.B.I. with its strengthened staff and better information to exercise better check on the final sale values and to make judgments on the requests, referred to in para 5.27, for sale of goods at values beyond the stipulated range. Induction into the Reserve Bank

staff deployed on this work, on temporary deputation, at appropriate level, of officers from Customs having necessary expertise and experience in valuation work might be useful.

Jurisdiction of Customs and Reserve Bank.

5.30 The Public Accounts Committee, in its 98th Report, observed that the Reserve Bank has at present no machinery to check declarations of value of goods by importers and exporters, and that the Customs authorities should be charged with the responsibility for verifying whether the declared values of exports and imports are fair and in accordance with exchange control law and requirements. The Working Group of the Administrative Reforms Commission also recommended that the Customs authorities should be entrusted with the exclusive jurisdiction and responsibility for verifying if declared values in exports are fair and in accordance with the exchange law and requirements. The Working Group also suggested that, if necessary, amendments to the F.E.R.A. should be carried out to remove all doubts regarding the legal competence and jurisdiction of Customs officers to check valuation.

5.31 As regards the legal competence and jurisdiction of Customs officers to check export valuation for purposes of F.E.R.A., the understanding had all along been that the Customs had the necessary jurisdiction until the Supreme Court in one case held that 'so far as the value of the goods exported was concerned, the matter was left primarily in the hands of the Reserve Bank and the Customs authorities were not burdened with that work.' The position was remedied by subsequent amendment of section 12(1) of the F.E.R.A. The amended provision clearly gives power to the Customs authorities to take necessary penal action "if the declaration made by the exporter is not true in any material particular, including that of the value".

5.32 In actual practice also, in the case of goods exported on outright sale basis, the exporter declares the full export value of the goods and this is checked by the Customs authorities Theoretically the Reserve Bank have legal competence to permit deductions from this value. We are of the opinion that, save in those cases where any variation in price is sought on account of post-export factors, the Customs judgment regarding the value should not be altered and the Reserve Bank should not allow any change in the values without consulting the Customs authorities. This would not, however, apply to post-export factors. As regards the deductions on account of trade discounts, we have already suggested that no deduction on that account should be permitted either by the Reserve Bank or the authorised dealers unless this has been clearly declared by the exporter in the prescribed form and accepted by the Customs authorities. With respect to agency commission also which only the Reserve Bank can allow, we have recommended that this also must be declared in the prescribed form. Where this is not done, the Reserve Bank, barring some specific cases, should not allow any remittance on account of agency commission without consulting Customs. As regards the exports on consignment basis, the only check which the Customs can exercise at the

time of export of goods is whether the provisional values, as declared, are fair. The final sale value is accounted for to the Reserve Bank. The question of checking of the final sale values is interlinked with their realisation and, therefore, this function has necessarily to be performed by the Reserve Bank. We have, however, suggested strengthening and improving the Reserve Bank machinery dealing with the checking of final sale values, and for that purpose, induction of officers having expertise and experience in valuation matters, into that machinery. We have also emphasised the need of better co-ordination between the Reserve Bank and the Customs in this regard. We have also suggested that the Reserve Bank should take the help of the valuation cell and officers to be posted abroad. For consignment exports we have suggested introduction of a provision in the law empowering the Government to issue directions to the effect that the exporter would not sell the goods exported on consignment basis at a price which is lower than the value declared to the Customs by a specified margin unless he obtains the permission of the Reserve Bank in advance for selling at a lower price. While taking decisions on such requests, the Reserve Bank could usefully draw upon the expertise and the valuation data available with the Customs. This, on the whole, according to us, would be a satisfactory arrangement.

Post-export variation in price.

5.33 Even in the case of exports on outright sale basis, there is sometimes a variation in the price which is inherent in the terms of the contract and depends upon ascertainment of certain facts at a post-export stage. For instance, in the case of ores where it is stipulated in the contract that the final price would be determined on the basis of analysis report, and the weighment at destination, the final price may be different from that declared at the stage of export. Similarly, there could be some other post-export factors which might affect the value of the goods. At present, these matters are dealt with by the Reserve Bank or under their direction by the authorised dealers. We do not find any justification for transferring this work to the Customs.

5.34 The following statement of the reductions allowed by the Bombay and Madras offices of the Reserve Bank of India during particular periods, mentioned therein, will give an idea of the post-export reductions allowed by the Reserve Bank :—

Office	Period	Number of applications.	Total invoice value Rs.	Total amount of reductions Rs.	Percentage.
Bombay	1st July 1969 to 30th Sept. 1969.	205	40,62,936	6,26,741	16%

Office	Period	Number of applications.	Total invoice value Rs.	Total amount of reductions Rs.	Percentage.
Bombay	1st Oct. 1969 to 31st Dec. 1969.	99	31,01,935	5,10,647	16%
		304	71,64,871	11,37,388	16%
Madras	1st July 1969 to 31st Dec. 1969.	41	10,49,921	1,18,933	11%

The reductions were allowed for various reasons, but in the majority of cases, the explanation for seeking reductions was that the foreign buyer was not prepared to take delivery of the goods and, therefore, the goods had to be sold to someone else under distress sale at a reduced price. By and large, as far as the valuation is concerned, the Reserve Bank is going by the values as determined by the Customs, but in circumstances of this nature, they have obviously to grant reductions in genuine cases. We believe that the Reserve Bank does not permit reductions easily, and in any case ensures that the same exporter does not avail of these reductions repeatedly. However, the Reserve Bank could usefully take the help of officers to be posted abroad, if our suggestion in that regard is accepted, for ascertaining whether the reduction has been claimed on a genuine ground or not.

Power of authorised dealers.

5.35 Authorised dealers in foreign exchange are permitted to accept an export bill for negotiation or collection even if the amount of the bill falls short of the declared value by a small amount not exceeding 10 per cent of the invoice value, provided the shortfall is accounted for by trade discount and legitimate trade charges, such as, rebate for late shipment, quality allowance, etc. A sample survey of about 500 GR forms has indicated that deductions were allowed by the authorised dealers only in six cases and all these related to payment of agency commission to be effected out of the proceeds of the bills. Of these, in two cases the approval granted by the Reserve Bank was quoted while in the other four cases, the reference number of the approval granted by the bank was not given. It is difficult to say whether a sample survey of 500 forms is representative of the general trend regarding the exercise of powers by the authorised dealers in this regard. It, however, appears that authorised dealers have been using these powers sparingly. But one significant fact that emerges from this study is that out of these 500 forms, in the case of four forms, deductions were allowed on account of commission without making sure that these were covered by the Reserve Bank's permission. In fact, the authorised dealers cannot allow any deduction on account of commission even within the limit of 10 per cent if the same is not approved by the Reserve

Bank. This indicates that it is not advisable to entrust a purely banking organisation to decide whether the trade discount is genuine or the deductions are on account of legitimate trade charges. In our view, whether a particular trade discount is reasonable or not, should be wholly a concern of the Customs authorities and there should not be any question of an authorised dealer permitting any further deduction on account of trade discount. As regards other deductions on account of legitimate trade charges, we feel that the authorised dealers should have power to allow deductions in those cases only where a question of discretion is not involved, and it is merely a question of arithmetical calculation flowing from the terms of the contract and the post-export data made available to them. Such cases would relate to deductions on account of quality analysis, short shipment and late shipment penalty, and deductions on account of other similar charges as may be specified by the Reserve Bank. We think that the authorised dealers should not have any discretion to allow deductions in any other type of cases.

Coordination between Reserve Bank and Customs.

5.36 As observed by us elsewhere, both the Customs and the Reserve Bank play important roles in the sphere of exchange control. Their roles are complementary and not exclusive of each other. It is, therefore, essential that there should be a proper co-ordination between these two agencies. At present, there is no regular system of exchange of views on matters of common interest or mutual consultation with regard to valuation matters. We suggest that there should be periodical inter-departmental meetings between the officers of these two agencies, where they could discuss specific controversial cases and also the problems relating to streamlining of procedures, valuation of consignment exports, scope and nature of reductions to be allowed by the Reserve Bank, and other allied matters. Lack of proper coordination may either lead to evasion of responsibility at both ends, or to duplication of functions involving a conflict of decisions which are likely to be exploited by unscrupulous traders to their advantage.

Suggestions for statutory amendments.

5.37 Apart from the procedural aspects, there are some inconsistencies in the foreign exchange law which need to be removed, and some lacuna which required to be bridged. Sec. 12(1) of the F.E.R.A. requires a declaration of the full export value, and also an undertaking that the exporter would repatriate the full export value of the goods. Sec. 12(2) of the said Act, which deals with repatriation of the sale proceeds, uses the expression, "the full amount payable by the foreign buyer in respect of the goods." It is true that in the generality of cases, the full amount payable by the foreign buyer, and the full export value of the goods, would mean one and the same thing. Cases, however, have come to notice where the use of the two different expressions has created difficulties in enforcement, and also with regard to the liability of the exporter in terms of Sec. 12(2). We think that this anomalous position should be removed. It would be desirable if in section 12(2) also use is made of the expression, "the full export value of the goods." We have earlier in this chapter already suggested amendment of section 12(5) of the F.E.R.A. Section

12(1) as amended after the judgment of the Supreme Court in the case of Union of India Vs. Rai Bahadur Sriram Durgaprasad, requires a declaration in the prescribed form. It may be mentioned that prior to the amending Act, an ordinance was issued. In the amended Act, a somewhat different phraseology for declaration is required. The GR form and other forms have, however, not yet been amended to conform to the provisions of section 12(1). The declaration mentioned in the form is in accordance with the terms of the ordinance and not the Act. We recommend that the prescribed forms should be immediately amended to make these in conformity with the language of section 12(1), before any complications arise due to the inconsistency in the language of the statute and the subordinate legislation.

CHAPTER - VI

SPECIAL VALUATION CELL

6.1 In the chapters "Imports" and "Export Valuation", we have focussed on the deficiencies in the Customs machinery in regard to collection of valuation data. We have also stressed the need for having a regular and separate machinery for collection of valuation data, its collation and dissemination to the Customs appraising officers. We recommend the constitution of a Special Valuation Cell in the Customs Organisation for this purpose. Here, we intend to outline the constitution and functions of this Cell. In this connection, we have noted the observations of the Public Accounts Committee in its 98th Report (1969) that 'valuation of exports/imports is a job which calls for expertise and a knowledge of prevalent market conditions in India and abroad. We are in respectful agreement with these observations. The Customs Study Team has pointed out that U.S.A. has an elaborate system of Customs agents and consular certification of invoices. Australia also has Customs officers posted in important foreign centres for this purpose. The Customs Study Team recommended that Customs officers should be stationed at important foreign centres for collecting information and intelligence and making enquiries where necessary. We have also taken note of these recommendations in coming to our conclusions.

Constitution of Cell

6.2 The Special Valuation Cell should have subsidiary cells at the four major ports, namely, Bombay, Calcutta, Madras and Cochin. Each such cell will be the focal point with respect to certain specific commodities whose exports take place mainly through that particular port. For the purpose of that commodity it will serve the Customs Organisation all over the country. For instance, the cell at Calcutta would deal with jute, tea, mica, shellac; the cell at Bombay with textiles, chemicals, films, the one at Madras with hides and skins, and tobacco; and the one at Cochin with marine products, spices and cashews. In order to provide for co-ordination of the work of the cells at these four places, there should be a headquarters unit at Delhi under a Director of Valuation who would effect over-all co-ordination. The rationale for having these cells at the four ports is that the main sources of information, namely, the trade, the export promotion councils, and the necessary expertise in respect of a commodity is available at the location where the bulk of exports of that commodity takes place. Further, in this arrangement, movement of documents will be minimised. Any information about such a commodity, required by the Government, Reserve Bank or any other Custom House would come from the particular cell dealing with that commodity.

Functions of Special Valuation Cell

6.3 The appraising officers of the Customs Department are in any case expected to make market enquiries locally, collect valuation data, keep notes of the prices of goods passing through Customs and make use of the information available from various trade journals, local and foreign. The

role of the special valuation cells will be to aid the Customs appraising officers, and supplement their efforts and knowledge. These cells are not intended to be a substitute for the individual initiative of the Customs appraising staff. We envisage the functions of the Special Valuation Cell to be three-fold: (i) to collect, collate, digest and disseminate the valuation data to the field formations in a convenient intelligible form; (ii) to conduct research regarding market trends in the important purchasing centres abroad, and in spheres which are particularly vulnerable to invoice manipulation; and (iii) to operate as a store house of information upon which assessing officers can draw as and when required.

(a) – Collection of data

Posting of officers abroad and their functions.

6.4 The Special Valuation Cell will be charged with the responsibility of collecting material from abroad and locally. For that purpose, it may be necessary to have offices abroad which would regularly feed the special valuation cells with the required information. Where the work would be heavy and the information required extensive, it seems to us that our embassies will not be able to do this work. For one thing the embassy officers dealing with commercial work do not have the specialised knowledge needed for collection of this kind of information and would not be able to provide the correctives which would be required for making a judgment in regard to value. For another, they would not have the time needed. Offices of the State Trading Corporation abroad, according to one of their representatives who appeared before us, would not have the time to feed the Special Valuation Cell regularly, as they are engrossed in their own trading activities. Our feeling, therefore, is that Customs officers trained in this work should be posted to important centres abroad for the purpose of supplying such information. (We already have such officers at London, Hong Kong and Kuwait.) For places not of crucial importance, however, arrangements for securing information in the specified form required can be made with our embassies. In any case, even where Customs officers are posted they must retain close contact both with their commercial counterparts in the embassies and officers of the STC or MMTC located there.

6.5 Officers could be posted initially at important centres abroad where such officers are not already posted. Such places would be Tokyo, Singapore, Tehran, Nairobi, Frankfurt, New York, Montreal. Each centre could cover a specified zone. While considering the question of posting of officers abroad, though considerations of economy would have no doubt to be kept in view, the paramount consideration which should weigh with the Government is the need for information and data for the purpose of valuation check, and the extent to which such information would be useful in detecting and preventing invoice manipulation and the leakage of foreign exchange. In selecting officers for this assignment, preference will have to be given to aptitude for and experience in valuation work.

6.6 The function of these officers, apart from the study of published material, would be to keep a close touch with the market, and provide the necessary information regarding values. They could keep themselves in

touch with the opening and closing quotations at those places for the various commodities, the prices in auction, if there is any, and similar other material which is to be gathered from trade enquiries. The services of these officers could also be utilised for performing some allied functions such as furnishing of information in specific disputed cases, exploring the possibilities of sale of goods assigned to the Central Government, or to any other person in terms of the provisions of the F.E.R.A. in cases where the exporters make requests for sale at reduced prices, and supplying such other information which the Customs, the Valuation Cell, the Reserve Bank, the Enforcement Directorate or the C.B.I. may ask from them with regard to the values and repatriation of sale proceeds. Their services could also be used with regard to settlement of quality claims or other claims of similar type.

Collecting of information locally.

6.7 As regards the collection of information from within the country, the Special Valuation Cell would have to keep a constant liaison with the appraising departments of the Custom Houses, the export promotion councils, commodity boards, leading brokers, auctioneers, trade associations, chambers of commerce and industry, state trading bodies and other leading exporters of particular commodities. To the extent published material is available, the special Valuation Cell would have no difficulty in getting this regularly. In addition, the Cell could have a small staff to collect unpublished valuation data from different local sources and make market enquiries, wherever necessary.

6.8 The Special Valuation Cell should also have arrangements for the collection of statistical data regarding the values at which goods were allowed to be exported at different ports. If it is not practicable to collect such statistical data for all the commodities, the exercise may be confined to collection of this kind of data with regard to commodities which are particularly susceptible to invoice manipulation. We feel computers will be needed by these cells and arrangement will have to be made accordingly.

(b) — Collation of material

6.9 The Special Valuation Cell would collate the material collected from different sources with a view to making it available to the appraising officers in a readily intelligible form convenient for reference. The valuation data so collated would indicate the export prices for different qualities and brands of a particular commodity for a particular day or a period, the range of fluctuations, the date of contract, price difference on account of delivery schedules, and quantitative levels. For the purpose of standardisation of qualities, the Special Valuation Cell could take the help of Export Inspection Council which, we understand, is exercising quality control for almost 80 per cent of the commodities exported from India. It would also be necessary to specify the correctives which ought to be applied while determining the value of a particular category of goods.

(c) — Dissemination

6.10 In so far as ready commercial intelligence is concerned, the Special Valuation Cell would have to ensure that whatever is urgent is

disseminated to the concerned appraising officers immediately, without waiting for its collation. It hardly needs to be emphasized that even for the digested information the time-lag between the receipt of the information and its supply to the concerned officers should always be as short as possible so that the information supplied does not become out of date. The ports other than the one where the special valuation cell for a particular commodity is located, should get the needed information very quickly. This is particularly true of minor ports where the officers concerned may not be fully conversant with the trend of prices for particular commodities, and an unscrupulous exporter may try to take advantage of it.

Valuation Cell separate from Central Exchange

6.11 We understand that the Central Exchange being set up in pursuance of the recommendations of the Customs Study Team would primarily deal with collection of data in relation to imports, and the main emphasis would be on classification of imported goods. The valuation aspect will, no doubt, be there but is likely to be relatively less significant. The special valuation cells suggested by us would primarily deal with collection, collation and dissemination of valuation data, particularly in relation to export goods. Although the functions of the two organizations will be different in some respects, some dovetailing of the two organisations, to the extent possible, will need to be considered.

Legal Powers

6.12 For the purpose of collection of valuation data and for eliciting information, the special valuation cells should be invested with necessary legal powers. However, since the special valuation cell will merely be a store house of information and would act in an advisory capacity and the responsibility for valuation check would continue to remain with the concerned Customs officers, it may not be necessary to give it any legal power beyond what is needed for eliciting information. The judgment with regard to acceptability or otherwise of the values would be that of the concerned appraising officers, and they would have adequate legal powers to take action in cases of under-invoicing or over-invoicing.

Post Export Scrutiny

6.13 We recommend that the special valuation cells should also undertake a post export scrutiny of all shipping bills. For that purpose, all the relevant data available in the shipping bills and the invoices should be punched and fed into a computer which could throw up cases indicating deviations in the value from the normal beyond a particular range. Such cases could then be taken up for further investigation. If on such investigation it is found that in particular cases there was no proper justification for the deviation and that it was a case of under-invoicing, suitable penal action should be initiated by the Custom House against the exporters concerned. In order to enable the computer to compare the prices of

goods of indentical quality, it would be necessary to indicate the full details of the quality and other particulars of the goods exported. For that purpose, suitable modifications could be made in the form of the shipping bill. It should also be made mandatory for the exporter to attach a copy of the contract/invoice with the shipping bill. This extra copy will be retained along with the shipping bill by the Custom House. Apart from isolating cases of under-invoicing, the post export scrutiny would also have the advantage of helping the Customs authorities in identifying the areas vulnerable from the point of view of invoice manipulation.

Investigation

6.14 The special valuation cells should not associate themselves with investigations but confine their role to giving expert advice regarding valuation. The investigations in cases referred by the special valuation cells would be undertaken by the investigation agency of the Custom House which may need some strengthening. The investigation agency would pursue investigations in cases referred to it by the special valuation cells, and collect evidence for the purpose of adjudication or prosecution as the facts of a particular case may warrant. The investigating unit would also marshall the evidence and place the matter before the adjudicating officer, namely, the Assistant Collector, the Deputy Collector, the Additional Collector or the Collector as the case may be.

CHAPTER — VII

EXCHANGE CONTROL ON REPATRIATION OF THE VALUE OF THE GOODS EXPORTED

7.1 The purpose of section 12 of the Foreign Exchange Regulation Act is that the full export value of the goods shipped is realised within the prescribed period and in the prescribed manner. This objective is sought to be achieved by providing for a declaration of the full export value and other particulars at the stage of export and by providing a procedure to ensure that the full export value payable by the foreign buyer is realised through authorised channels. We have already dealt with the aspect relating to valuation check in chapter V. In this chapter we deal with the control exercised in regard to the realisation of the proceeds of exports. This control is in three respects: (i) that the amount realised is the full export value payable by the buyer in respect of the goods exported; (ii) that this amount is repatriated in the prescribed manner; and (iii) that the repatriation is within the period prescribed. The responsibility for exercising check in relation to all these aspects is that of the Reserve Bank. The Reserve Bank has licensed a number of commercial banks as authorised dealers in foreign exchange who negotiate or accept on a collection basis export documents and ensure repatriation of the foreign exchange proceeds of exports, under the directions, general or specific, given by the Reserve Bank from time to time.

Prescribed forms and their movement.

7.2 As stated earlier, all commercial exports from India are required to be declared on a prescribed form. The main forms prescribed for the purpose are known as PP, EP and GR—1 forms. The PP form is required to be used for all exports by post; the EP form is used for declaring exports made otherwise than by post to Pakistan and Afghanistan; and GR-1 form is for declaration of exports to other countries made otherwise than by post. These forms are issued in sets of three copies.

7.3 The exporter furnishes the original copy of the 'form' along with the shipping bill to the Customs authorities. After exercising the valuation check and the necessary scrutiny in other respects, the Customs forward 'the form' to the Reserve Bank. The duplicate and triplicate copies along with the shipping documents are required to be furnished by the exporter to the authorised dealer within a period of 21 days from the date of shipment. Exporters are not permitted to send shipping documents to the overseas buyers except through an authorised dealer; and no authorised dealer would accept the documents for negotiation under a letter of credit, or for being sent abroad for collection, unless they are accompanied by duplicate and triplicate copies of the prescribed form. As soon as the documents are sent overseas, the authorised dealer is required to forward the duplicate copy of the form to the Reserve Bank after certifying thereon the fact of having received and sent abroad the shipping documents, and undertaking to ensure that the proceeds are repatriated within the prescribed period of six months (three months in the case of Pakistan and Afghanistan) in an approved manner. The triplicate copy of the prescribed

form is required to be sent by the authorised dealer to the Reserve Bank when the proceeds of the exporter's bill are actually realised, after certifying thereon such realisation. In the case of PP forms, all the copies are first to be presented to an authorised dealer, who would return the original after counter-signature to the exporter and would retain the duplicate and triplicate copies of the forms. The original copy of the form, after counter-signature by an authorised dealer has to be submitted by the exporter to the customs through the concerned postal authorities along with the relative parcel at the time of its despatch. After despatch of the parcel, the postal authorities forward the original PP form to the Reserve Bank.

Short shipment.

7.4 When a part of the consignment covered by a 'form' filed with the Customs, is short-shipped, the exporter is required to give notice of such short-shipment to the Customs authorities who should, inter alia, indicate the number and date of the original 'form' filed by the exporter with the Customs. After verifying that the goods were actually short-shipped, the Customs certify the fact of short-shipment on the duplicate of the notice, and forward this to the Reserve Bank. On the basis of these short-shipment notices, the Reserve Bank amends the original copy of the GR/EP form. When the entire shipment is shut out from a particular vessel and is being shipped by another vessel, the Customs allow alteration of the name of the vessel on the shipping bill. The alteration on the GR form is done by the Reserve Bank on intimation being received from the Customs. Where the shipment by another vessel is likely to be delayed, the shipping bill is cancelled and intimation to that effect is sent to the Reserve Bank who on receipt of this intimation cancels the original form; subsequently when the export is to take place a fresh shipping bill along with a new form has to be filed. We were informed that short-shipment intimations are not always being sent by the Customs promptly, and that the delay in intimation causes difficulty to the Reserve Bank in verifying the value particulars on the prescribed forms. The Customs authorities need to take particular care to see that there is no delay in forwarding these short-shipment intimations to the Reserve Bank. For giving intimation as to the change in the name of the vessel, a different form of notice is to be used. We were informed by the Reserve Bank that sometimes the Customs authorities, even in a case where only change in the name of vessel is involved, use the short shipment notice forms, and this creates confusion. The Customs authorities should take care in using the proper form of notice while sending such intimations, so that a case of change in the name of the vessel does not get treated as a case of short-shipment in the Reserve Bank.

Transmission of original copy of the GR form from Customs to Reserve Bank.

7.5 As is clear, the entire control of repatriation of the proceeds of exports is exercised through the prescribed forms referred to above and their safety during movement from one authority to another is, therefore, of the utmost importance. If the original copy of the form is deliberately made to disappear either from the custody of the Customs, or during the transit from Customs to the Reserve Bank, or in the Reserve Bank itself, there is no alternative check by which the repatriation of the value of the

goods exported can be secured. In this event, the exporter will obviously not present the shipping documents, and the duplicate and triplicate copies of the forms to the authorised dealer and, in such circumstances, there would be no control to ensure that the exchange earned is received in an approved manner through authorised channels. The only method by which the Reserve Bank ensures that the duplicate and the triplicate copies of the forms are filed with an authorised dealer, is by means of matching of the original with the duplicate copy of the form. If for a particular form only the original has been received and the duplicate is not forthcoming, the Reserve Bank would ask the exporter as to why the duplicate had not been filed with an authorised dealer. This check, however, would not be possible if the original copy of the form itself is not received in the Reserve Bank, or is missing from there.

7.6 Cases have occured where the original copy of the form was not received by the Reserve Bank; or it was missing after receipt. In Bombay, a system has been devised which apparently provides a better check on the movement of the original form from Customs to the Reserve Bank. In the Custom House, each such form is given a security number. The numbers are given serially for a month. The number of the form and the security number are entered in a register maintained by the Custom House. An official of the Reserve Bank personally collects these original forms from the Custom House daily. On receipt, the serial numbers are checked in the Reserve Bank to ensure that no form is missing. These numbers are noted in a receipt register in the Reserve Bank. The Reserve Bank will also be giving a corresponding running number of theirs against each of the serial numbers given by the Custom House. In order that there is control over the movement of the original forms up to the stage of coding, we recommend that either the Customs serial number, or the corresponding serial number given by the Reserve Bank should find a place in the code sheets. This would also enable the Reserve Bank to check up whether any of the original forms forwarded by the Custom House is missing. We also feel that there should be supervision at a higher level, both in the Customs as well as in the Reserve Bank, to ensure that there is no scope for any kind of malpractice with regard to the transmitting of the original form from the Customs to the Reserve Bank.

7.7 The system referred to above has not yet been introduced at other ports; the position is particularly unsatisfactory in respect of the exports made through minor ports. In the case of minor ports, at present there is a considerable time-lag before the original forms reach the Reserve Bank, and in the absence of a system of security numbers, the possibility of some forms disappearing in transit cannot be ruled out. Having regard to the fact that the entire edifice of exchange control with regard to realisation of full export value of the goods is built around this prescribed form, particularly the original, any deficiency in the control with regard to the movement of the original copy of the form from Customs to the Reserve Bank could be serious, and result in substantial loss of foreign exchange. We recommend that the system of security numbers should be introduced at all ports immediately. Further, the working of this system should be properly supervised

both in the Customs as well as in the Reserve Bank. For minor ports, a procedure should be evolved to ensure that the forms relating to the shipping bills passed on a particular day are despatched to the Reserve Bank on the same or at the latest by the following day.

System for ensuring receipt of duplicates and triplicates by Reserve Bank.

7.8 The procedure for ensuring repatriation of the proceeds of exports through prescribed forms was introduced in 1941. Under this procedure, the original forms received from the Customs are physically matched with the duplicate and triplicate forms received from the authorised dealers. If the duplicate copy of the form is not received by the Reserve Bank from the authorised dealer within a reasonable period, the Reserve Bank is required to send a reminder to the exporter asking for his explanation for non-submission of the duplicate and triplicate copies of the form to the authorised dealer within 21 days of the shipment of the goods. Similarly, if the triplicate copy of the form is not received from the authorised dealer on expiry of the prescribed period of three months or six months, as the case may be, the Reserve Bank sends a reminder to the authorised dealer.

7.9 In the early fifties, the Reserve Bank introduced a system of coding of the duplicate copy of the form. Coding implied giving of code numbers to certain essential particulars declared on the prescribed form, such as the type of goods exported, the destination, the method of finance, currency and the name of the exporter. These code numbers are indicated in a separate sheet with reference to each 'form'. The 'invoice value' stated in each form is also recorded in the code sheet. Coding of the duplicate copies of the forms was introduced purely for statistical purposes and it was not intended to act as a method for finding out whether the duplicate copies had been received or not. Subsequently in 1965, it was decided to have similar coding for original and triplicate copies of the forms as well. The object behind this was that, besides statistical utility and for various studies such as the performance of individual exporters, and destination-wise sales of particular commodities, coding of the three copies could also be used to make sure whether duplicates and triplicates for all the forms had been received. This system of coding of the three copies of the form is still in vogue and the help of the computers is being taken for preparing the lists of those 'forms' for which the duplicates or triplicates have not been received.

7.10 The system of physical matching referred to in para 7.8 was satisfactory so long as the number of forms received was small. From 1941 upto 1947, the number of forms received was about 300 per month at each of the major offices of the Reserve Bank viz. Bombay, Calcutta and Madras. With the extension of exchange control to the sterling area in 1947, and the subsequent growth of export trade, the number of forms has increased considerably. At present, the number of forms received at each of the major offices is about 15,000 per month. Accordingly, the Reserve Bank has been finding it increasingly difficult to ensure physical matching of the three copies of the forms in time, with the result that there is considerable delay in sending reminders for the outstanding duplicate and triplicate forms. Further, the physical matching can be done

only if the copies of the forms are kept in regular order at a place from where they can be easily secured. In practice, however, what happens is that quite often one or the other copy of the form is removed from its regular place for reference in connection with some enquiry or correspondence, and until it is restored to its original place, no matching is possible. This adds to delays in sending reminders for the outstanding duplicates and triplicates. As regards the system of coding and computerisation referred to in para 7.9, it is noticed that the lists of outstandings for duplicates are being prepared by the computer on a half-yearly basis. For a number of forms the lists are ready only after about 9 months from the date of shipment. There is a similar time-lag of about 9 months, or more, in preparing the lists of outstanding triplicates, after the expiry of the period prescribed for repatriation of the proceeds. Besides the delay, the lists prepared on the computers quite often have been found to be erroneous. Whatever be the causes— errors in coding, defects in the punching of cards or programming— the fact remains that the system of coding and computerisation has not yet yielded the results that were expected of it.

7.11 From the foregoing, it will be seen that there is considerable delay on the part of the Reserve Bank in sending reminders for outstanding duplicates and triplicates. In fact, sometimes the reminders are not sent at all. The Reserve Bank, however, gets quarterly returns from authorised dealers of export bills/documents remaining outstanding for over 6 months or 3 months, as the case may be. On the basis of these quarterly returns, the Reserve Bank takes the necessary follow-up action. But with regard to the duplicates not received by the Reserve Bank, there is no corresponding system of cross-check.

7.12 We view this situation with some concern. It is of paramount importance that the Reserve Bank should have an effective procedure which ensures that duplicate and triplicate copies of the prescribed forms are received in time. We understand that the Reserve Bank is trying out a new procedure, which has since been introduced at some of its offices. Under this procedure, the particulars given in the code sheets of the original forms (cf 7.9) are rearranged by the computer according to the printed serial number of the forms. The code sheets in the modified form are used as control sheets for the purpose of facilitating watch over receipts of duplicates from the authorised dealers. The control sheets, apart from giving a complete view of the receipt of the forms at one place, also enable the Reserve Bank to find out expeditiously the number of forms for which duplicates have not been received and to issue reminders for these. It is yet to be seen how well the new procedure will work. It is, however, desirable that this procedure is constantly kept under review and modified as and when necessary in the light of the results obtained.

Scrutiny of the prescribed forms.

7.13 The scrutiny of the 'forms' is done by the Reserve Bank in two stages: verification of originals with duplicates; and verification of originals/duplicates with the triplicates. The matching of the originals with duplicates essentially involves a scrutiny of the following: (i) the amount

of the bill drawn is not less than the invoice value shown in the original form; (ii) the method of finance is an approved one and is the same on both the copies; and (iii) the authorised dealer has properly completed the certificate on the reverse of the duplicate copy of the form. As for the second stage of the scrutiny, namely, matching of the originals/duplicates with the triplicates, it involves an examination of the certificates furnished by the authorised dealers on the triplicate copies of the forms to see that the full proceeds have been received. If there is shortfall, an explanation is to be obtained from the authorised dealer.

7.14 This scrutiny procedure suffers from the same drawback, as pointed out by us elsewhere, that quite often one or the other copy of the 'form' though received, is taken away from its proper place in connection with references received from the authorised dealers or exporters or other agencies and is not available at the time of physical matching or scrutiny. The result is that several forms escape matching and scrutiny. Further, it is not possible to say with any degree of definiteness as to which particular forms have remained unmatched.

7.15 We have referred in para 7.12 to the introduction of the control sheets for the purpose of matching and scrutiny of the original forms with the duplicates. As mentioned earlier, the control sheet will have all the details of the original copy of the 'form' and, therefore, for comparison with the duplicate, it will no longer be necessary to take out the original form to compare it with the duplicate. The scrutiny and comparison could be made with reference to the control sheet. As regards the scrutiny of the triplicate for the purpose of finding out whether the realisation is of the same amount as stated in the duplicate, the Reserve Bank is able to ensure this in two ways. Firstly, the authorised dealers have no discretion to allow any deductions from the value as stated in the duplicate form without the permission of the Reserve Bank. The authorised dealers have to submit to the Reserve Bank quarterly statement of the short realisations which enables the Reserve Bank to proceed further in the matter. Secondly, the shortfalls in the realisations are also reflected on the computer. By and large, these checks are adequate. It is, however, necessary that the system of punching and computerisation should be improved so as to ensure that the results obtained are fully correct.

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7.16 In this connection, it is relevant to mention that the original copy of the prescribed form which is checked by the Customs, is forwarded to the Reserve Bank, and does not go to the authorised dealer. The duplicate and triplicate copies of the forms, on the basis of which the authorised dealers watch the repatriation, are not seen by the Customs. As such, there is no direct method by which the judgment of the Customs regarding the correctness of the declared value of the goods exported is made known to the authorised dealers. It may be that on comparison of originals with duplicates, the Reserve Bank would notice the discrepancy, if any, and point this out to the authorised dealers. We, however, think it desirable that there should be a direct method of communicating the Customs judgment regarding the value to the authorised dealers so that they can safeguard that the

amount repatriated is in conformity with the value as determined by the Customs. We recommend that all the three copies, that is the original, the duplicate and the triplicate of the prescribed forms should be submitted to the Customs authorities at the time of export and the Customs authorities after necessary scrutiny, should endorse all the three copies. This will have the advantage that, apart from the scrutiny by the Reserve Bank referred to in paras 7.13 to 7.15, there will be an initial check by the Customs also at the stage of export.

Ensuring repatriation of the full amount payable by the foreign buyer.

7.17 It is the responsibility of the Reserve Bank to ensure that the full amount payable by the foreign buyer is repatriated. We are satisfied that, by and large, both the Reserve Bank and the authorised dealers do take sufficient care. However, in our opinion, the control exercised in this regard suffers from the following deficiencies:—

(a) Rupee value and invoice value

7.18 The prescribed form on which the declaration is to be made by the exporter has, inter alia, two columns captioned (i) 'invoice value'; and (ii) 'rupee value'. The 'rupee value' indicates the value declared on the shipping bill for Customs assessment purposes, while the 'invoice value' indicates the 'full export value'. The system envisages that whenever the Customs authorities, upon scrutiny, find the value declared for assessment purposes unacceptable, they should have the 'rupee value' in the prescribed form appropriately amended. Similarly when they do not accept the 'full export value' as declared, they should have the appropriate entry against the column captioned 'invoice value' suitably amended. There can be situations where the value as determined for Customs purposes may be different from the full export value of the goods. It has, however, been noticed that at times even when the full export value as declared is not accepted, and the export is allowed on the basis of the full export value as determined by the Customs, it is the entry in the column captioned 'rupee value' which is amended on the prescribed form and not the entry against the column captioned 'invoice value'. This could result in the repatriation being made with reference to the unamended invoice value. It is, therefore, important that in cases where the Customs authorities are not satisfied about the correctness of the full export value as declared and allow the export on the exporter's undertaking that he would bring back the foreign exchange representing the full export value as determined by them, they should not only ensure amendment of the contract or the invoice, but should also see that the declaration in the column relating to invoice value in the prescribed form is also correspondingly amended. We also feel that the expressions 'rupee value' and 'invoice value' as used in the existing forms are confusing. We would suggest that these should be replaced by more appropriate expressions such as 'Customs assessable value' and 'full export value'.

(b) Variation on account of some post-export factors

7.19 In a number of contracts, there are terms stipulating that the sale value would be determined on the basis of the analysis results or weight as

ascertained at destination. Consequently, the value which is declared to the Customs at the stage of export, may sometimes not represent the final price. The final price may be lower or higher depending upon the results at destination. Where the final price is lower, the exporter repatriates the lower price only, and is able to justify this to the authorised dealer on the basis of the final results. But if the final price is higher, an unscrupulous exporter may not disclose this to the authorised dealer. Theoretically, the authorised dealers are required to check the terms of contract in each and in every case to ensure that the final price, if higher than that declared, is realised. In practice, however, this is not being done. As these cases are not treated as those of consignment exports, they would also escape the scrutiny by the Reserve Bank. In other words, the amount realised in these cases, may not be the full amount payable by the buyer for the particular goods. We recommend that specific instructions should be issue to the authorised dealers asking them to check the terms of contract in each and every case, and to ensure that the full amount payable by the buyer is realised according to those terms.

Delay in repatriation.

7.20 The period within which the exporter should repatriate the sale proceeds is three months in the case of exports to Pakistan and Afghanistan and six months in the case of exports to other countries. According to the instructions issued by the Reserve Bank, the authorised dealers, while negotiating or sending for collection the bills covering exports, are required to enter in a special column in the relative bills register, the date on which the period of six months or three months, as the case may be, will expire. They have to watch the realisation of bills through the register, and in cases where the bills remain outstanding beyond the relevant date, the authorised dealers are expected to take up the matter with the exporter. At the end of March, June, September and December, authorised dealers have to submit to the Reserve Bank statements of export bills outstanding for payment beyond the prescribed period. On receipt of these statements, the Reserve Bank initiates follow-up action with the exporters whose bills are shown as outstanding. In cases where an exporter fails to account for the proceeds of an export made by him, and also fails to prove that the lapse occured in spite of bonafide efforts, his name is placed on the exporter's caution list, and the relative case papers are forwarded to the Enforcement Directorate for appropriate action. Simultaneously, an advice is also sent to the local Customs authorities requesting them not to accept further declarations on GR/EP forms from such exporter, unless the 'forms' bear the counter-signature of the Reserve Bank. By placing a person on the caution list, he is not prohibited from making further exports; the only additional liability on such an exporter is that he must obtain Reserve Bank's prior approval before export. Prior approval is given by the Reserve Bank to such exporters when they have either received the full export value in advance or when they produce documentary evidence showing receipt of confirmed irrevocable letters of credit in their favour covering the value of the goods. In such cases, the Reserve Bank keeps a watch to see that the triplicates of such forms reach the Reserve Bank within one month from the date of their approval.

7.21 In spite of the various steps devised by the Reserve Bank, there have been a number of cases where the foreign exchange was not realised within the

prescribed period. There is, therefore, need for the Reserve Bank to tighten up its machinery and procedures to enable it to take prompt and effective follow-up action in cases where the full export value is not realised within the prescribed period. We have already suggested some measures in this chapter which, we believe, will improve the position. The Reserve Bank should, however, keep the position under constant review with a view to ensuring realisation of full export value within the prescribed period and taking prompt follow-up action in cases of non-repatriation within such period.

Remittance of agency commission.

7.22 The question of agency commission is of vital significance for the reason that even a small manipulation in the quantum of agency commission, over a period of time, adds up to a sizeable amount. It appears that the Reserve Bank approves commissions within the framework of certain guidelines laid down by the Department of Economic Affairs. The Reserve Bank, however, does not have adequate machinery for collection of basic material regarding the prevailing international rates of commissions for different commodities on the basis of which to form a judgement regarding the reasonableness or otherwise of the quantum of commission. Such information with regard to different commodities is sadly lacking. We feel that this is an area where research and vigilance are required and any improvement in the background knowledge would help in ensuring that commissions are allowed at appropriate rates thereby preventing leakage of foreign exchange under the guise of agency commission. We would suggest that the special valuation cell which we have discussed in chapter VI, should also undertake research in this direction and collect the relevant data in respect of prevailing international trade practices regarding payment of agency commissions for different commodities. Obviously, it will be necessary that the special valuation cell and the Reserve Bank should have proper coordination in this regard, and the valuation cell should regularly feed the Reserve Bank with the necessary information. We have also mentioned in Chapter V that export special valuation branch of the Custom House, suggested by us, should, while examining the books of accounts, also keep in view the possibility of manipulations in respect of agency commission.

Quality and other claims

7.23 The following statement will give an idea of the remittances made on account of claims during particular periods through Bombay and Madras offices of the Reserve Bank:

Office	Period	Number of applications.	Total Invoice value Rs.	Total amount of claims allowed Rs.	Percentage.
Bombay	1st July, '69 to 30th Sept., '69.	1001	5,65,43,769	18,28,101	3%

Office	Period	Number of applications.	Total Invoice value Rs.	Total amount of claims allowed Rs.	Percentage.
Bombay	1st Oct., '69 to 31st Dec., 69.	552	1,57,94,081	4,06,822	3%
		1553	7,23,37,850	22,34,923	3%
Madras	1st July, '69 to 30th Sept., '69.	735	1,81,84,404	9,67,334	5%
Madras	1st Oct., '69 to 31st Dec., 1969.	507	5,48,64,225	5,96,271	1%
		1242	7,30,48,629	15,63,605	2%

The amounts allowed to be remitted by the Reserve Bank on account of quality claims are not very large in their totality; but may be quite substantial when viewed in the context of the invoice values of the individual consignments. Applications made by exporters for remittances in settlement of claims put in by overseas parties on account of compensation for non-fulfilment of contract, shortage in weight, length, inferior quality of goods supplied, penalty for late shipment, etc. are required to be submitted to the Reserve Bank by the exporter through his banker. We understand that, in a large number of cases, the Reserve Bank accepts such claims on the basis of the survey records of the internationally recognised surveyors. That is appropriate. In the case of jute goods, the Reserve Bank at times consults the Jute Contract Registration Committee. For small claims, however, the Reserve Bank does not insist on survey certificates. We consider that in so far as small claims are concerned, much scrutiny is not necessary and the procedure followed by the Reserve Bank appears to be satisfactory. But in respect of large claims, we would recommend that the Reserve Bank should consult the Export Inspection Council which exercises quality check in respect of about 80% of the goods exported and Customs who would have ordinarily examined the goods prior to export. Such consultation would, on the one hand, make the task of Reserve Bank somewhat easier; on the other, it would enable the Export Inspection Council to have a look at its own machinery and working to find out how and why the defect, if it was a defect, was not detected by them prior to export.

Transfer of documents by exporters.

7.24 The Reserve Bank has permitted authorised dealers to accept from their constituents, for negotiation or collection, shipping documents covering exports even where the original declaration from had been signed by some other party, provided the constituent drawing the bill countersigns

on the duplicate and triplicate copies of the form, the undertaking given by that party to deliver the foreign exchange proceeds of the shipment within the prescribed period. We understand that this type of transfer of documents has been found to be necessary in the case of back to back contracting by public sector undertakings, such as State Trading Corporation and Minerals & Metals Trading Corporation. We are not sure whether legally this system is sound. Prima facie, it appears that such a procedure may go counter to the responsibility fixed on the exporter under section 12(1) of the Foreign Exchange Regulation Act, in the sense that the liability of the exporter in this procedure becomes somewhat secondary. We understand that the Government is already considering amendment of the law which would permit a declaration from the countersigning party undertaking responsibility for repatriation of foreign exchange. We endorse the need for a change in the law.

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7.25 In respect of goods covered by the registered exporters' scheme, no person is entitled to get the import replenishment unless he registers himself with the export promotion council of that particular commodity. The export promotion council verifies his antecedents, and this safeguard covers most of the exports, because a large number of commodities are covered by this scheme. In respect of the other exporters who are not members of any export promotion council, there is no check or verification to ensure that the exporter is in a position to fulfil the undertaking given by him with regard to foreign exchange realisation, or that he is really a genuine party who intends to abide by the undertaking given by him. Cases can, therefore, take place where any sham exporter exports goods and thereafter disappears. In fact, there have been such cases. Such exports involve a total loss of foreign exchange earned on the export of such goods. Fortunately, the number of such cases does not seem to be large, since the overall foreign exchange realisation is, by and large, in conformity with the statistics of export values. We understand that the Reserve Bank gives a code number to every exporter. But before allotting the code number, the Reserve Bank does not get any investigations made regarding the antecedents or creditworthiness of the exporter. We suggest that for exporters who are not registered with the export promotion councils, and their percentage will be small, the Reserve Bank should insist on production of a certificate from any scheduled bank regarding the status and creditworthiness of the exporter. The Custom House clearing agent should also, to some extent, be made responsible for verifying the status of his principal before taking the agency functions.

CHAPTER VIII

SOME REMEDIAL MEASURES OF GENERAL NATURE

8.1 In the earlier Chapters while discussing the commodities which are particularly vulnerable to invoice manipulation, and while analysing the problems relating to imports, export valuation and repatriation of sale proceeds, we have made various recommendations with regard to procedures organisation and law which aim at suggesting specific remedies for problems, and the deficiencies noticed by us. In addition to these, there are a few measures of a general nature which suggest themselves for consideration. These general measures are: (i) canalisation; (ii) advance registration of contracts; (iii) floor prices; (iv) auctions; and (v) quality control. Most of these measures have already been in force in relation to several commodities for some time. Though their under-lying objectives have been somewhat different and wider, the working of these measures has a direct relevance to the subject of our study here. It is, therefore, necessary to examine these in some detail to assess their merits and limitations in the context of the problem which is the subject of our study.

Canalisation and the role of the Public Undertakings

8.2 Canalisation has been tried in many areas of imports and exports for several years. Apart from the manufacturing undertakings in the Public sector like Hindustan Steel, Hindustan Machine Tools who directly import some of their requirements, and export some of their products, there are public trading undertakings like State Trading Corporation, Mines & Minerals Trading Corporation, which mainly operate in the sphere of imports and exports. The S.T.C. largely deals in canalised items of import and handles a few export items. The M.M.T.C. deals mainly in the exports of ores and minerals and handles some import items.

8.3 There are various policy considerations that have to weigh when deciding upon the canalisation of a particular commodity; safeguard against under-invoicing or over-invoicing cannot be the sole consideration. What commodities should be brought under canalisation is a matter to be determined in the wider context of the larger policies of the Government though safety from trade manipulation must always be an import consideration. When the trade in a particular commodity is canalised, the reasonable assumption is that a public sector undertaking though it may not always be able to obtain the best price would have no interest in under-invoicing or over-invoicing the goods. Risk of manipulation through connivance of odd individuals in the staff of the undertakings cannot be altogether ruled out. Yet canalisation can clearly be expected to reduce the risk of fraudulent manipulation. From the limited point of view of the problem which is the subject of our study, we would suggest that the feasibility of canalising the trade in the commodities which are particularly vulnerable to invoice manipulation, should be seriously considered. As instances, we would say that films, mica and shellac could be useful additions to the list of commodities of which the export is canalised.

8.4 When a new commodity is brought under canalisation, the practice of public undertakings is to enter, during the transitory period, into what are called 'back to back' contracts, because in the initial stages there is understandable lack of experience in that line of trading. But the so-called transitory periods often tend to be too long. (This type of arrangement is more common in the commodities for which ad hoc barter agreements are approved). In 'back to back contracting', the public undertaking only lends its name, and endorses the contract after such checking as it may like to do, while the actual negotiation and the consequent import or export continues to be done by the private party. This is necessary, we were told, for two reasons, viz., (i) not to cause sudden dislocation of the existing trade; and (ii) to give to the public undertaking time to develop the necessary expertise and contacts to continue the trade in that commodity. While commending canalisation as a safeguard against fraudulent manipulation, we do not have in mind such 'back to back' contracting which, in our opinion, only introduces a false sense of complacence amongst those responsible for checking the values of the goods imported or exported. Therefore, we feel that where canalisation is effected this should be in reality and not merely in form, i.e., the concerned public undertaking should itself negotiate the deals and do the actual importing or exporting and not merely lend its name to such transactions by so-called 'back to back' contracting arrangements. Where such 'back to back' contracting is considered absolutely necessary and unavoidable during the transitory period, we are of the view that these transitory periods should be kept to the minimum, and the earliest opportunity should be taken to bring about canalisation in the real sense.

8.5 We feel that during the unavoidable transitory periods the public undertakings, like S. T. C. and M. M. T. C. should enter the field of exports as one of the exporters trading in competition with the others of the private sector. We understand that even now there are certain non-canalised commodities in the trade of which the S. T. C. is operating alongwith the private sector. The comparison of the values obtained by the public undertakings on their exports with those obtained by the private parties on their exports of comparable goods could, on the one hand, be useful guide for the valuing agencies and, on the other, serve the undertakings to exercise a check upon their own performance.

8.6 Another aspect we would like to focus on here is that some public undertakings like the S. T. C. have numerous offices and correspondents abroad. These are intended to service the undertaking. It should be possible to make some use of these personnel for other purposes in the field of trade but outside their specific duties. Firstly, such representatives, particularly at places where no officers have been specifically posted for this purpose, could be used to feed regular information as to the prices and market trends to the special valuation cells which we have proposed in chapter VI. Secondly, the services of the trading undertakings in the public sector and their offices abroad could be utilised to assist in disposal of the goods which remain unsold after export. Absence of a machinery to arrange for such disposal has handicapped the authorities in exercising the powers available under Section 12(3) F. E. R. A. for assigning unsold goods. We

have also suggested in chapter V that in cases of consignment exports, the exporter should not sell such goods abroad without prior permission of the exchange control authorities if the price falls below the expected sale price declared by him in G.R. form at the time of export by more than the specified margin. Cases have also arisen where goods exported on outright sale basis were not taken delivery of by the foreign buyer for various reasons. Even where the exchange control authorities were not fully satisfied regarding a case, the extra cost in foreign exchange involved in getting the goods back to India has been an inhibiting factor, and the authorities have had to consent unwillingly to such goods being sold at a price much lower than the initially declared full export value. In such situations also, the availability of an organization to arrange for disposal of such goods abroad would greatly help. It is not that the undertakings will be able to assist in all situations. But the underlying principle is important, because it places the concerned authorities in a position to make a judgement in such cases in the confidence that they have an alternative arrangement for effecting sales to fall back upon if they do not approve of the sale price.

Advance Registration of Contracts

8.7 The scheme of advance registration of contracts is useful in certain spheres of exports where the market fluctuates a great deal, particularly, if long term delivery contracts are a normal feature of trade in that commodity. It serves as a safeguard against under-invoicing which may be perpetrated by manipulating the dates of contract in order to take advantage of the lower price obtaining on a particular day, while the actual contract might have been made on a different day at a different price. Advance registration makes manipulation in respect of the dates of the contracts difficult. The scheme has another advantage. Ordinarily goods are presented for export at the nick of time, and any enquiries in relation to their value made at that stage are necessarily either superficial or may entail holding up of the shipments and dislocating the trade. Advance registration of contracts affords the concerned authorities ample time to make necessary enquiries and satisfy themselves as to the correctness of the contracted value of the goods well before the goods are actually presented for export. Further, under this scheme when a contract is not accepted for registration, it becomes possible for the exporter to re-negotiate the deal, and in cases where the contracted value has been accepted, the trader can tender the goods for export with greater confidence.

8.8 The scheme of advance registration of contracts has been tried, on a voluntary basis, in jute exports. We have made a detailed study of the working of this scheme. The registration is handled by a committee which is headed by the Jute Commissioner with a representative each of the Customs and the R.B.I., as the other members. An officer of the Jute Commissioner functions as its Member-Secretary. Even though the scheme is voluntary, it was gathered that about 90% of the contracts are presented for registration. The scheme envisages that a contract must be presented for registration within one clear working day of its being finalised. As a general rule, for

standard constructions of hessian and sacking, the Committee would not register a contract if the price is either less than the minimum quotation for the day on which the contract is entered into, or is below the opening quotation for that day, by more than 1%, whichever is lower. In actual practice, the discretion to accept the value and register the contract is exercised by the Assistant Directors in the Jute Commissioner's office if the difference is less than ¼% and by the Member-Secretary of the Committee if the difference is more than ¼%, but less than 1%. Where the difference is more than 1%, the case is referred to the Committee as a whole. As mentioned by us in chapter III, with respect to the non-standard constructions, other than carpet backing and specialities, the price is deduced from that of the nearest standard construction. As regards carpet backing, the present practice is to fix the minimum export price in consultation with the Indian Jute Mills Association, taking into account the cost of the raw-material, the cost of manufacture and a reasonable margin of profit. The Committee ensures that the contract price is not lower than the minimum export price fixed in the manner referred to above, having regard to the differentials for different constructions. Where a contract is registered with the Committee, the Customs authorities are, by and large, guided by the contract price, though they retain the right to differ from it for good and sufficient reasons, and take different view as to the correct value. Where a contract is not registered, the value of the exports is independently checked by the Customs at the time of export.

8.9 The scheme being voluntary, there is no compulsion on the individual exporter to register his contract with the Committee. There is also no system of following up each contract registered with the Committee and of checking whether shipment against such contract actually takes place. There is thus no inbuilt safeguard against an exporter either registering a fake contract with the Committee, or against his suppressing the genuine registered contract if the price happens to fall below the contracted price at the time of the actual export of the goods. In the light of our study of the working of the exising scheme of advance registration of contracts for jute, we would emphasise two points;

(i) where an export commodity is made subject to advance registration of contracts, it should no longer be left to the option of the individual exporter whether to register or not to register his contract. The registration should be compulsory and, to give this effect, it may need to be given a statutory basis; and

(ii) there should be a system of following up the registered contracts and relating them to the actual exports made.

These two precautions appear to us to be absolutely necessary to guard against the type of malpractices, which, according to our study, can take place under the scheme that now operates for jute manufactures.

8.10 We discussed with the representatives of various Associations, and the officers of the Foreign Trade Ministry who met us, the question whether

the scheme of advance registration of contracts could be extended to other commodities. Their reactions were mixed. Some trade associations welcomed the idea on the ground that it would ensure quick clearance of shipments through Customs at the time of actual export; others were not so enthusiastic and felt that it would only add to the procedural requirements. We gathered that even in respect of jute the foreign buyers in U.S.A. have been objecting to the existing scheme of advance registration of contracts. We do not see the validity of their objection when the local exporters are not averse to it. As to what other export commodities could lend themselves to be brought under the scheme of advance registration of contracts, is a matter for deeper study which will have to be made by the concerned Ministry in consultation with the trade. But as stated earlier, such a scheme should be tried in those areas of exports where the market price is prone to frequent fluctuations, particularly so if the long term delivery contracts are the normal feature of the trade. As an instance, spices and cashew could be considered for inclusion in the scheme for advance registration of contracts.

8.11 One common point that emerged from our discussions with trade representatives is that an individual exporter would not like his contracted value becoming known to others in the trade, who may be his competitors. Therefore, in any scheme for advance registration of contracts, the responsibility for checking the values and registering the contracts would have to rest with some Government or semi-Government agency, such as commodity boards as the secrecy of the data presented for such registration will have to be ensured. Since Customs are finally responsible for checking the export value of the goods, their association with any agency made responsible to register the contracts is unavoidable. In respect of commodities for which there are no commodity boards, the Customs authorities could be made responsible for registration of contracts.

Floor Prices

8.12 The scheme of fixing floor prices for export commodities is designed primarily to guard against unhealthy undercutting amongst Indian exporters. It pre-supposes that there is a steady demand in the foreign market for a particular Indian product, and that the product has standardisation and uniformity in its qualities and grades. If there is no standardisation of qualities, it would be difficult to fix the floor prices. When a floor price is fixed for a particular commodity, such commodity cannot be exported at a value less than the floor price in force at the relevant time. Therefore, in cases where there is no firm demand or assured market for a particular product, fixation of floor price could impede exports

8.13 The fixation of the floor price, therefore, calls for a careful judgement to ensure that it is fixed at a correct level, which is neither too high nor too low. The floor prices are generally fixed by the Government on the recommendation of the concerned Export Promotion Council or the Commodity Board and these are supposed to be reviewed from time to time. The statutory medium used for fixing these prices is the Export Trade Control Order.

8.14 As an instrument to guard against under-invoicing, floor price fixation can be of some help in a limited way. At the same time, fixation of a floor price is prone to induce complacency in the Customs authorities who would be less inclined to question correctness of the values which conform to or are above the floor price, with the result that even in a case where the actual contracted sale price is substantially higher, the exporter could expect to get away by declaring to the concerned authorities an export value equal to or slightly above such floor price. Thus, the scheme does not per se eliminate the scope for under-invoicing, though it certainly reduces its range. Conversely, if the floor price for a commodity is unrealistically high at a particular point of time, then exporters, in their effort to conform to such floor price, so as to be able to export, the goods, will over-invoice their exports and subsequently resort to other manipulations, like false quality claims to compensate and bring down the sale proceeds to the level of the actual sale price. Our study has revealed that the floor prices have not always been very realistic and sometimes, have not been reviewed quickly enough. For instance, in tobacco exports, it has been noticed that the export values in many a cases have been more than the floor prices by as much as 20%. Other instances brought to our notice related to shellac and Bleeding Madras where the floor prices were reported to have been fixed at an unrealistically high level, compelling the exporters initially to over-invoice the goods, and then resort to other manipulations to neutralise the over-invoicing. The need for timely corrective action cannot be overemphasized. If the floor prices are to serve any useful purpose as an instrument to guard against under-invoicing and over-invoicing, it is of paramount importance that the floor prices should be fixed realistically. Since these will be only floor prices, there would always be room for upward variation of actual sale values. The Customs authorities would need to be careful in checking the values even in respect of commodities for which floor prices are fixed. It is equally important that the floor prices are fixed with reference to the precise grade or quality which necessitates certain amount of standardisation in the qualities.

Sale by Auction

8.15 The system of sale by auctions has been in vogue for tea; its origin lies in long-standing tradition. This system cannot be peremptorily introduced for other commodities. What the authorities can do is to encourage a development in this direction and help to create conditions which would make it possible for the trade to take recourse to the system of auctions. This pre-supposes that there is an organized market for the product, and sustained and staple demand for it abroad. Having regard to this, the scope for extending the system of sale by auctions to the commodities exported from India is necessarily limited.

8.16 From the point of view of the problem which is the subject of our study, the system of auction has one great advantage, namely, that it brings about open competition in regard to prices and eliminates possibility of manipulation since it excludes bilateral negotiations. Here again, it is necessary to ensure that the auction is truely competitive and fair, that the

authorities are in a position to correlate the prices fetched at the auction with the value declared at the time of export for these goods and that there are adequate safeguards against substitution.

8.17 In regard to tea, the main auction centre is Calcutta. Other centres are coming into existence at Cochin for the Nilgiri and south gardens tea, and in Assam for Assam tea. The Calcutta auctions are widely attended. There are regular tea brokers and agents who represent the tea garden owners. Agents of the foreign buyers also participate in these auctions. The sales in these auctions are both for local consumption and export. The tea which is sold at these auctions and exported thereafter is generally in the same condition and packing. Check on the export value is possible by correlating it with the price fetched at the auction, making an allowance for the mark up by way of commission or profit of the exporter. A substantial portion of the tea is also exported on consignment account for auctions at London. We suggest that there should be a suitable agency to be present at the London Auction to take note of the prices fetched for a particular lot at the auction, so that later a check may be exercised to see that the amount repatriated to India in relation to that lot corresponds to the amount fetched in auction. This is not done at present.

8.18 The system of auction is also in vogue in respect of coffee but it is somewhat different from that for tea. The Coffee Board, which has been statutorily placed in control of all coffee grown in India, makes allocations for local consumption and for export and then arranges auctions for both. As things stand, the Coffee Board does not come into the picture after the coffee meant for export has been auctioned, and does not exercise any check with respect to the actual exports. The Customs authorities also do not make any systematic effort to correlate the coffee auction prices with the export sale values. We have suggested in chapter III that with the types of control that the Coffee Board exercises with respect to the production and marketing of coffee, and since there is an international quota for the coffee exported from India, it should be possible for the Coffee Board to play a bigger role with regard to actual exports of coffee.

8.19 Feasibility of extending this system of sale by auction to other primary products, where conditions referred to in paragraph 8.15 exist or can be created, should be explored. We would for instance suggest tobacco for such consideration because as it is the practice in tobacco trade is for the representatives of the foreign buyers to come to India and negotiate the deals. Having a commodity board for tobacco and reorganising the pattern of trade so as to provide for auction of the graded tobacco can be examined.

Quality Control

8.20 Values of the goods exported or imported are dependent on their quality and, therefore, quality control is of considerable significance with regard to the valuation of the goods. If the qualities of the goods are standardised and strict quality control is enforced, it would help considerably in comparing the values of the goods exported or imported with the values of goods of like

kind and quality. Quality control is also significant in two other respects. Firstly, physical examination of the goods by Customs authorities is considerably facilitated if there is a compulsory quality control and pre-shipment inspection by a competent body of experts. Secondly, if the quality of the goods is according to the specifications of the buyers, there will be less scope for quality claims. Quality control would also minimise the extent of false claims made on the basis of the difference in quality.

8.21 In the last few years, Indian industries have become quality conscious. Export (Quality Control & Inspection) Act of 1964, empowers the Central Government to notify commodities which shall be subject to compulsory quality control or inspection or both, before shipment. A commodity, so notified, cannot be exported, unless it is accompanied by a certificate, or the article or package carries a recognised mark, indicating that it conforms to the specifications. In pursuance of the provisions of the Act, an Export Inspection Council has been established to advise the Government in regard to measures to be taken for quality control and pre-shipment inspection of the exportable commodities, such as, standard specifications and details of quality control and inspection methods. The Council is a statutory body. Qualified technologists and representatives of trade and industry are represented on it, and technical know-how of the various agencies in the country in the field of grading, standardization and inspection have been pooled together under the overall co-ordinating role of the Export Inspection Council. Thirty-one existing agencies, both governmental as well as private, have been recognised under the Act for carrying out quality control and preshipment inspection of various export commodities. To supplement the work of the recognised inspection agencies, mentioned above, the Government have also established five export inspection offices, one each in Bombay, Calcutta, Cochin, Delhi and Madras. These offices are under the administrative and technical control of the Export Inspection Council.

8.22 The general procedures for inspection are laid down in the form of inspection rules. The procedural details are worked out in close collaboration and consultation with the representatives of the industry. The Council has adequate testing facilities available to it. Government have also established appellate panels for each commodity or group of commodities covered by compulsory pre-shipment inspection schemes, so that any person who is aggrieved by the refusal of the agency to give a certificate of export-worthiness for his products, can appeal to the panel for re-appraisal.

8.23 Almost all the major commodities exported from India are now covered by the system of quality control or pre-shipment inspection. We believe that efforts are being made to cover, as early as possible, all items of export under the Act. The quality control in respect of certain commodities is of the in-process type, which means that quality has to be built into the product by well defined systems of process and production controls. In the case of consumer oriented engineering products, there is inspection of finished products with a view to ensuring that the product is in accordance with the buyers' specifications and the minimum standards laid down by the Government. The products

found satisfactory on inspection are subject to necessary preservative treatments, like, painting, anti-corrosive finish, etc. prior to packing. The packing is required to conform to the specifications which are designed to ensure that the product packed is not damaged in transit and gives adequate protection against weather.

8.24 We recommend that the Customs authorities and the Reserve Bank should keep close touch with the Export Inspection Council. Customs authorities could take the assistance of the Council in classifying the qualities of various products according to their standards. The Customs authorities, in consultation with the Council, should also evolve a more rationalised system of physical examination of the goods. Customs appraising officers should be aware of the procedures followed by the Export Inspection Council with regard to pre-shipment inspection and quality control. Since the quality of the goods would have, in the majority of cases, been checked by the Export Inspection Council and Customs, the Reserve Bank should take their assistance in settling large quality claims. We expect that with closer cooperation and co-ordination among the aforesaid agencies, the valuation check can be made more effective and the scope for value manipulations by manipulating the quality of the goods could be minimised.

CHAPTER - IX

OTHER ADMINISTRATIVE AND LEGAL MEASURES

eveloping f intelli- ence.

9.1 In Chapters IV, V and VI, we have made various suggestions for sharpening of the valuation processes. We have, inter alia, laid emphasis on the posting of officers at important centres abroad to ensure better inflow of commercial intelligence and valuation data, and on setting up of special valuation cells at the major ports which would receive valuation information from local and external sources, and then collate, interpret and disseminate it to the Customs appraising officers. With this improved inflow of internal and external commercial intelligence and valuation data, the Customs appraising officers will be better equipped to exercise valuation checks. In addition, for detection of under-invoicing and over-invoicing in particular cases, the general commercial intelligence will need to be supplemented by specific information about particular transactions and covert intelligence about the activities of specific exporters and importers. The existing system and machinery for collection of such secret intelligence from sources in India and abroad needs, in our view, to be suitably strengthened and improved. As far as internal intelligence is concerned, the necessary organisation and wherewithal are already there; what is required, apart from augmentation of the staff of the existing intelligence agencies, is to give a planned direction to their activities, and bring about closer co-ordination among different agencies concerned with intelligence about fiscal and exchange matters. We feel that their efforts have so far been directed mainly to collection of intelligence about tax evasion and smuggling as such. In our view, greater attention needs to be paid by them to gathering information and intelligence with regard to under-invoicing and over-invoicing. This would necessitate cultivating contacts, on a planned and systematic basis, in places where such information is likely to be secured. As for external intelligence, the officers who are posted abroad for making market studies and collecting valuation data, could also constitute the nucleus around which the necessary intelligence net work could be built up for securing secret information of the type required for dealing w.th under-invoicing/over-invoicing.

treng- hening f investi- gation gencies.

9.2 Investigation of under-invoicing and over-invoicing is a specialised work and calls for great technical expertise. It requires an adequate grounding in the principles of valuation, and techniques of the valuation process, a clear understanding of international commercial practices, and a deep insight into trade documentation and interpretation of such documents, a familiarity with day-to-day market conditions, apart from a thorough knowledge and grasp of the customs and foreign exchange laws. The investigation of these cases is essentially of a different nature than of cases of pure smuggling, or investigation of other criminal offences. These cases have, therefore, necessarily to be investigated by the concerned agencies of Customs and Enforcement Directorate, as the case may be, who have the requisite background and expertise in the matter. An appraising officer who detects a case of under-invoicing and over-invoicing, does, in fact, also investigate it before he puts up the case for adjudication. In addition, each Custom House has a special investigation section to deal with difficult investigation cases. These sections

have successfully investigated and established important cases, including those of under-invoicing and over-invoicing. With the increased emphasis on check of values from the foreign exchange angle suggested by us in Chapters IV and V, and the procedure for post-shipment scrutiny by the special valuation cells suggested in Chapter VI, more cases of under-invoicing and over-invoicing are likely to be thrown up for detailed investigation. We feel that the strength of the appraising investigation units in the Custom Houses should be augmented to cope with the anticipated increase in the investigation work.

9.3 When a case of under-invoicing and over-invoicing is to be taken to court for prosecution, this expertise and technical background will be equally necessary for marshalling the evidence and presenting the case in court. The prosecution in such cases by and large will need to be handled by the concerned agencies of Customs and Enforcement Directorate. For this purpose, the prosecution cells in the field establishments of these two Departments need to be considerably augmented and strengthened both quantitatively and qualitatively.

9.4 There will, however, be sensitive cases which, apart from the element of under-invoicing and over-invoicing, may have other wide ramifications, or at times may have elements of fraud or connivance on the part of Government officers. Such cases, in our opinion, should be referred for prosecution to the Economic Offences Wing of the C. B. I. Firstly, the prosecution of such cases will generally be long drawn out and time-consuming, and it would be preferable for the departmental investigating agencies not to be tied up with a single prosecution case for a long time because of their limited resources. Secondly, such cases would have certain facets which could be better investigated by an agency like the C. B. I. Since under-invoicing and over-invoicing will be the main ingredient in such cases, C. B. I. would need technical expert assistance to properly pursue those cases. For this purpose it would be desirable that its Economic Offences Wing should have on its staff some officers who have adequate expert grounding in technical valuation work.

9.5 Under section 110(2) of the Customs Act, 1962 if a show cause notice is not issued within a period of six months from the seizure or within the extended period of one year, the goods are to be returned to the person from whom they were seized. The Customs authorities, therefore, take particular care to see that the investigations are completed and the show cause notices issued within the prescribed period. When a case is referred to the C. B. I., it will be essential for the C. B. I. to complete their investigations expeditiously so that the Customs are able to issue a show cause notice within the prescribed period, and the departmental adjudication does not in any way get prejudiced. In order to enable the C. B. I. to do this, some augmentation of the strength of its Economic Offences Wing with officers and staff of adequate experience will be necessary, particularly as the tempo of investigations/ prosecutions in bigger cases gains momentum.

Customs adjudication machinery.

9.6 The adjudication machinery of the Customs, by and large, discharges its functions with a fair degree of competence and impartiality. Adjudication of cases of under-invoicing and over-invoicing, however, is particularly difficult and complex. Government might consider whether it would inspire greater confidence in the trade, and carry better conviction with the courts where the

more important of such cases are likely to go, if instead of adjudication by a single officer, there is a provision for constituting a bench of more than one officer for adjudicating important and complicated cases of under-invoicing and over-invoicing involving heavy amounts. The number of such cases is not likely to be large. There is already a precedent of this type on the appeal side. While ordinarily the appeals which lie to the Central Board of Excise & Customs are decided by a single Member of the Board, in complicated or important cases, a bench of more than one Member can be constituted by the order of the Chairman of the Board.

Adequacy of punishment.

9.7 Under the provisions of the Customs Act, a person involved in under-invoicing of export goods is punishable with imprisonment for a term which may extend to two years or with fine or with both. (A higher punishment is provided for commodities which are notified under section 123 of the Customs Act but those commodities are not the ones which are exported). In the Foreign Exchange Regulation Act also the punishment provided is the same. Since the maximum punishment is two years only, and no minimum punishment is prescribed, (minimum punishment is for commodities which are notified under section 123 of the Customs Act), it has been noticed that offenders are let off with imprisonment for a small period or with nominal fines. We would suggest that such offences should be made punishable to sentences of imprisonment in all cases, and any fine imposable by the court should be in addition to imprisonment and not as an alternative to imprisonment. For cases of under-invoicing/over-invoicing involving loss of foreign exchange of Rs. 1 lakh or more, a minimum sentence of six months' imprisonment should also be prescribed and the maximum, we recommend, should be raised to five years. In order to ensure that the persons are not prosecuted in petty cases or for offences of a technical nature, it would be desirable for the Customs Department and the Enforcement Directorate to lay down certain guidelines for deciding as to the cases in which prosecution should be launched.

Minor ports.

9.8 The organisation of minor ports requires special study for the reason that in view of the relatively less Customs expertise available at these ports, and the channels of communication not being prompt and adequate, it is comparatively easy for an unscrupulous importer or exporter to manipulate invoice values, and get through without being caught at minor ports, than at the major ports where higher level expertise relating to different categories of goods is available Having regard to the recommendations of the Customs Study Team, the Central Board of Excise & Customs have recently taken several measures to remedy the situation. They are providing for training to the officers employed on assessment work at the minor ports, in regard to commodities which are largely imported or exported through such ports. With regard to commodities of which the import or export through minor ports is infrequent or occasional, arrangement has been made for a recheck by the officers of the major Custom House of the assessments made at the minor ports in cases where the value of an individual consignment of such commodities does not exceed a specified value. In cases where the value of such consignments is substantial, consultation with the officers of the major Customs House prior to the finalisation of the assessment has been provided for. This should by and large solve the problem. We have also recommended

in Chapter VI that the valuation data available at the major ports should be disseminated to the minor ports with the least delay. We would in addition suggest that there should be periodical meetings between the officials of the minor ports and major ports to discuss common problems.

Role and strengthening of Enforcement Directorate.

9.9 From the point of view of foreign exchange contraventions, the scope of the jurisdiction and functions of the Foreign Exchange Enforcement Directorate is very wide. Even though the Enforcement Directorate is not concerned with the checking of values of goods imported or exported, that function being performed essentially by the Customs, and to some extent by the Reserve Bank, the role of the Enforcement Directorate is important in plugging the leakages of foreign exchange in its own sphere of activity and responsibility. In the sphere of exports it has the responsibility for taking action in cases of non-realisation of the full export value in the prescribed manner, and within the prescribed period. Generally such action is taken by the Directorate on a reference being made to it by the Reserve Bank, and sometimes on its own in pursuance of information received by it directly. It was mentioned to us that there have been instances where the Reserve Bank was not very prompt in referring to the Enforcement Directorate for necessary follow-up action the cases where the sale proceeds had not been realised within the prescribed period. In Chapter VII we have made suggestions for improving the Reserve Bank procedures which should enable the Reserve Bank to spot more quickly the cases of non-realisation or delays in realisation of the sale proceeds of export goods. This should enable the Reserve Bank to refer such cases to the Enforcement Directorate more promptly. In cases where the Reserve Bank, by reason either of the non-receipt of duplicate G.R. form from the authorised dealer, or due to lack of response from an exporter when addressed, or for any other reason, comes to suspect that export in a particular case has been made by a bogus or fictitious party, the need for a prompt reference to the Enforcement Directorate would be even greater, because delay in such cases might stifle the investigation. In the sphere of imports, if the suggestions made by us in paragraph 4.30 are accepted, the Enforcement Directorate will also be taking up investigation in cases where remittances are effected without import of any goods, or against import of worthless goods for the clearance of which no bills of entry are filed with the Customs. This would be an additional field of activity for the Enforcement Directorate. Another valuable contribution that the Enforcement Directorate can make in their effort to tackle the menace of under-invoicing and over-invoicing, is to intensify their drive against foreign exchange racketeers and brokers. If a concerted effort is made to smash these gangs, it will have an overall effect on the source of leakage of foreign exchange. The object of invoice manipulation generally is to secrete foreign exchange which could readily be sold through unauthorised channels. Blocking of these channels would make the disposal of illegal foreign exchange difficult thus reducing the motivation for generating such unauthorised exchange. We were informed that the Enforcement Directorate has not been able to attack this problem vigorously owing to inadequacy of resources. We would like to underline the great importance we attach to a concerted drive against these gangs. Having regard to this, we would recommend augmentation of the strength of the Enforcement Directorate so that it can concentrate with greater vigour on breaking the vicious circle of illegal

dealings in foreign exchange, and be in a better position to discharge its increased responsibilities.

Adjudication machinery of Enforcement Directorate.

9.10 We would also recommend appropriate augmentation of the adjudication machinery of the Enforcement Directorate. Delay in adjudication of cases takes away the deterrent effect of the punishment awarded. At present, the F.E.R.A. vests the powers of adjudication only in the Directorate of Enforcement. We understand that there is a large backlog of cases pending for investigation, and awaiting adjudication. With the intensifying of the enforcement activities, and enlargement of the coverage by the Enforcement Directorate, the number of cases arising for investigation, and coming up for adjudication, is bound to increase further. We feel that there should be at least two officers at Director's level, one supervising the investigation work, and the other dealing with the adjudications. This bifurcation of functions is desirable, not only from the point of view of the workload, but also for another important consideration, namely, that the handling of adjudication by an officer who has been associated with the investigation of the case is per se objectionable, and may be questioned in a court, as has actually happened in some cases. This arrangement may necessitate minor legislative changes in the Foreign Exchange Law. In respect of smaller cases of adjudication, it may be appropriate to delegate the adjudication function to junior officers of the Enforcement Directorate at a suitable level, which, we understand, has recently been done to some extent.

Making abetment an offence in F.E.R.A.

9.11 We observe that the maximum penalty which the Director of Enforcement can inflict upon the offender is three times the foreign exchange involved; this, in our view, in a number of cases, would not be an adequate punishment. We suggest that the maximum penalty should be increased to five times the foreign exchange involved. Further, the Director of Enforcement should also be in a position to impose penalty on every person concerned in the offence, and proceed against abettors and persons who conspire, counsel or procure others to contravene the provisions of F.E.R.A. For that purpose, it would be necessary to make this area specifically an offence under the Foreign Exchange Law, and further to amend the provisions of section 23 of the F.E.R.A. providing for imposition of a penalty on every person concerned in the offence,

Prosecution to be in addition to departmental adjudication.

9.12 As mentioned by us earlier in this Chapter, the punishment which a court of law can impose on the offender under the Foreign Exchange Law is inadequate and needs to be enhanced. Further, like the Customs Act, there should be a provision that for an offence under the F.E.R.A., both adjudication by the Director of Enforcement and conviction by a court of law are possible. The two should not be alternatives as at present. We would also suggest that in more and more cases, prosecution should also be launched apart from adjudication so as to have a deterrent effect. At present, the Enforcement Directorate does not have the necessary expertise and staff for pursuing prosecution cases. Organisational changes in this respect are also, therefore, necessary. While some important cases calling for prosecution will get referred to the Economic Offences Wing of the C.B.I., the Enforcement Directorate itself should have the wherewithal to deal with the majority of prosecution cases.

Amendment of section 12(2) F.E.R.A.

9.13 As we have mentioned earlier, section 12(2) of the F.E.R.A. needs to be amended in some respects. We have pointed out that the use of the two expressions: "the full export value of the goods" and "full amount payable by buyer" used in sub-sections (1) and (2) of section 12 of the F.E.R.A. gives rise to difficulty in application in certain situations. We have suggested in Chapter V that instead of the expression "full amount payable by the buyer" used in section 12(2), the term "full export value" should be substituted. We are also of the view that the expression "no person entitled to sell or procure the sale of ", is vague. It could be taken, as some courts have held, that this is a generic term and would cover every exporter; on the other hand, it could be taken to mean that this sub-section covers those cases only where the exports were on consignment account. In our view, it would be more appropriate if, instead of this expression, section 12(2) uses the words "the exporter of the goods or the person who has sold the goods or is entitled to sell or to procure the sale thereof." The precise drafting will need to be settled by the Ministry of Law.

Tendering of pardon to accomplice.

9.14 Foreign Exchange contraventions involving invoice manipulations are serious offences, but difficult to establish before a court of law. Quite often, in important and big cases it is difficult to prosecute these cases successfully without the help of an accomplice. However, in the normal course, an accomplice may not be forthcoming to help the authorities, unless they are in a position to tender pardon to the accomplice. Section 337 of the Criminal Procedure Code, provides for tendering of pardon in the case of any offence punishable with imprisonment extending upto seven years and some of the offences under the Indian Penal Code. Since the contraventions of the Foreign Exchange Law, or the Customs Act, do not fall in any of these categories, this provision would not apply to them. We suggest that in the interests of justice, and with a view to making it possible to obtain the evidence of a person who is supposed to have been directly or indirectly concerned in or privy to the offence, power should be available for tendering pardon to such persons in court cases relating to contravention of Customs and Foreign Exchange laws. Since the Code of Criminal Procedure is otherwise applicable to these proceedings, sections 337, 338, 339 and 339A may be suitably amended for conferring this power in relation to customs and foreign exchange offences.

F.E.R.A. offences to be non-cognizable.

9.15 The F.E.R.A. offences for which the sentence of five years is proposed to be prescribed would automatically become nonbailable and also cognizable under the provisions of the Cr. P.C. On the Customs side offences carrying such sentences have, for good reason, been specifically made non-cognizable by virtue of section 104 of the Customs Act. We suggest that on the lines of the Customs Act, in the F.E.R.A. also, a provision should be made to the effect that foreign exchange offences should not be cognizable, notwithstanding anything contained in the Code of Criminal Procedure.

Summary trial.

9.16 We also suggest that on the lines of the existing provision in the Customs Act, a provision should be made in F.E.R.A. to provide for summary trial of the foreign exchange offences, barring those for which the maximum punishment is to be five years.

Deprivation of certain facilities and concessions to offenders.

9.17 In the fight against fiscal and economic offences, it is not enough that the methods and machinery for detection of such offences should be improved and the punishment for proved cases made deterrent; it is also necessary that there is greater social awareness of the evils of such crimes, and as much social stigma attaches to them as to other crimes against society. The names of the persons who are proved to be guilty of under-invoicing/over-invoicing should be widely publicised. In the sphere of foreign exchange, by virtue of the powers conferred under section 27 of the F.E.R.A., the Government have published rules which are called the Foreign Exchange Regulation (Publication of Names) Rules, 1970. These rules provide that the Director shall cause to be published in the official gazette the names and addresses and other particulars of persons of certain categories mentioned in the rules. These include persons who have been convicted by a court for contravention of any of the provisions specified in sub-section (1) of section 23, and also persons who have been adjudged by the Director for contravention of these provisions, provided the exchange involved is Rs. 10,000/-or more, or there has been a previous adjudication by the Director, or conviction by a court in respect of the same person. In addition, the Government has been empowered to publish the names of any other persons who have been found guilty of any contraventions of the provisions of the F.E.R.A. or of any rule, order or direction made thereunder, if it is satisfied that it is necessary or expedient in the public interest so to do. We recommend that similarly rules should also be framed for publication of the names of offenders in customs cases relating to under-invoicing or over-invoicing in imports and exports. Further, we are also of the view that such persons should be debarred, for a specified period, from getting any facilities or concessions which are given to importers or exporters under certain schemes, such as those relating to export cash assistance, and import entitlements under the Registered Exporters Scheme.

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9.18 It has been noticed that in complicated and important cases where prosecutions are launched, documents obtained from abroad from various sources are tendered as evidence. These documents are vital for proving the case. However, according to the provisions of the Evidence Act, the execution of the documents has to be proved first, before these are admitted in evidence. For that purpose, it becomes necessary to call for witnesses from abroad, which, apart from being disproportionately expensive, is also not always practicable. In the matter of establishing the offences of under-invoicing and over-invoicing, the evidence which can be collected from abroad will be of particular importance, and if such evidence were to be shut out merely for technical reasons of admissibility, it would make the task of the investigation agencies even more difficult. We, therefore, suggest that the provisions of the Customs Act and F.E.R.A. should be suitably amended to provide for admissibility, as evidence in court, of the documents received from abroad, and for raising similar presumption in respect of them, as are now raised under section 139 of the Customs Act and section 24A of the F.E.R.A. in respect of the documents which are either produced before the Customs officers or Enforcement officers, or are seized by them.

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9.19 The investigation of offences of under-invoicing and over-invoicing understandably takes time. The investigation agencies have been experiencing difficulty owing to the accused persons fleeing from the counrty before the in-

vestigations can be completed. We suggest that a suitable provision should be made in the Passport Act to provide for refusal of the issue of passport, or for impounding a passport, if already issued, to persons against whom investigations for such fiscal offences have been instituted.

CHAPTER - X

PROBLEMS RELATING TO BILATERAL ACCOUNT TRADE

10.1 In India's foreign trade, the share of the trade under bilateral agreements against non-convertible rupees is sizable. The bilateral account trade has been steadily on the increase. In the year 1958-59 when bilateral account agreements were not in force, the exports to the N.C.R. countries amounted to Rs.34.24 crores, representing approximately 5.9% of the total exports during that year. This increased to Rs.307.45 crores, representing 21.8% of the total exports in 1969-70. The imports in the year 1958-59 from the countries which are not covered by the bilateral account agreements were of the order of Rs.30.80 crores, representing 3.4% of the total imports; these rose to Rs.281.4 crores in 1969-70, representing 17.9% of the total imports. Apart from the quantitative increase in India's exports to these countries, there has also been progressive diversification of the commodities exported to the countries covered by bilateral account agreements. This pattern of trade has already been an important factor in India's overall increase in trade during the last decade. The Study Team has, however, been concerned with the scope of leakage of foreign exchange arising from the special features of this bilateral account trade.

10.2 On a superficial view it would appear that imports and exports under this bilateral account trade do not entail any transactions in foreign exchange. It is true that directly no transaction in foreign exchange takes place as such. But basically the position is not much different from that in regard to our trade with the free foreign exchange area. For instance, if the exports to the N.C.R. countries are undervalued or if the goods imported from N.C.R. countries are overvalued, we are, in effect, getting less goods from those countries against the exports made to them. It amounts to not getting a return equivalent to the full export value of our goods. This underlines the need for as strict a check in the valuation of the goods exported to or imported from N.C.R. countries as that in the case of the goods exported to or imported from free foreign exchange area. However, it appears that the check of values of the goods imported or exported under the bilateral trade account does not receive as much attention as it should. The approach in this regard needs to be re-oriented.

10.3 While emphasising the need for correct valuation, we are conscious of the difficulties involved. The correct valuation of the goods exported to or imported from the N.C.R. countries is more difficult owing to certain special features of this trade. The check of values by comparison to the values of goods of like kind and quality, which is the ultimate weapon available with the Customs agencies, is not easily feasible with regard to the imports from N.C.R. countries because usually at the other end there is only one trading agency for particular categories of goods. On the other hand, a number of parties from India export goods to N.C.R. countries and inter se competition has the effect of keeping down their export prices. In so far as imports from N.C.R. countries are concerned, we feel that better market intelligence with regard to the value of similar goods exported by the N.C.R. countries to other

countries who are not covered by similar arrangements, would be a useful guide. It might be worthwhile exploring the possibility of having a clause in the bilateral agreements which has the effect of ensuring that the contracting parties export the goods to each other at prices which are comparable to prices of similar goods exported by them to other countries not covered by such agreements. In some cases there are stipulations to the effect that the obligations under the agreement will be subject to the prices of the goods being competitive in relation to world prices. But, we understand, that in actual working these stipulations have not been of much help to us. It is our view that, to the extent possible, the exports to and imports from countries covered by N.C.R. agreements, where a single trading agency operates and which, therefore, enjoys an obvious advantage in the matter of its price policy, are handled at our end also by a single public sector agency. These measures will improve our bargaining position.

10.4 Another difficult problem which is peculiar to this bilateral account trade is the diversion of the goods exported to these countries. This aspect had come in for serious notice by the Public Accounts Committee, which, in its Fifty-fifth Report (1968-69), inter alia, observed:

> "The Committee are disturbed to learn that goods valued at Rs.2.6 crores meant for export against rupee-payments under Trade and Payments Agreements executed with Yugoslavia, Hungary, East Germany, Czechoslovakia and Tunisia were diverted or attempted to be diverted to convertible currency areas..... The Committee would also urge Government to study carefully, in the light of the findings now available, the modus operandi adopted by the parties, so that loopholes in the existing regulations and procedures could be plugged. Government would also do well to consider how best they could make a more realistic assessment of the import requirements of countries with whom rupee payment arrangements are executed so that the scope for diversion of exports is eliminated."

10.5 Some of the witnesses, who appeared before us, also made a reference to this feature of the bilateral trade. Customs authorities and the Foreign Exchange Enforcement Directorate mentioned that they had detected a number of cases of such diversion, and that the diversion of exports, or what is commonly known as the switch trade was taking place on a large scale. The Leader of the French Economic and Technical Mission to India (Report in the Statesman dated 13-12-1970) recently stated that a number of Indian products entered France as re-exports from East European countries with whom India has rupee-payment arrangements. The concerned representative of the Ministry of Foreign Trade, who appeared before us, however, was of the opinion that while some cases of such type have occurred, the malpractice could not be said to be taking place on a large scale.

10.6 Diversion of our exports adversely affects us from the foreign exchange angle in two respects. In the first place, to the extent of the foreign exchange value of the goods diverted, we lose free foreign exchange. Secondly, the countries who resort to diversion, sell such diverted goods at a lower

price, and to that extent the diversion has the effect of depressing the unit value of our goods and also the market for our exports in the free foreign exchange area. The rupee-payment countries compete with and undercut us in the free foreign exchange area in regard to sale of our own goods.

10.7 We have no data to come to any definite conclusion regarding the precise extent of diversion of exports made under the bilateral account trade. Certain basic material is, however, available from which some inferences can be drawn. Firstly, according to the information available with the Customs and the Enforcement Directorate, such diversion is fairly prevalent in regard to certain commodities. In fact, these agencies have actually detected a number of cases of this kind. Secondly, it is seen from the published statistics that some of the traditional commodities which are exported from India to the bilateral account countries are also exported by them to other countries. While it is possible that these commodities exported from bilateral account countries may not be goods of Indian origin, and a part of these may have been imported from other countries having similar bilateral arrangement, from these figures it is not unreasonable to conclude that quantity of Indian goods exported to bilateral account countries are diverted from there and re-exported to free foreign exchange area. If the extent and scope of the problem have to be studied in depth, which we are not in a position to do, a comparative analysis of the following data for two years, one prior to the introduction of the bilateral account trade and the other of a recent year, would be useful: (i) exports from India of all the major traditional and non-traditional commodities to the N.C.R. countries; (ii) exports from India of those commodities to other countries; (iii) imports by N.C.R. countries of those commodities from bilateral account countries other than India; and (iv) exports of those commodities from N.C.R. countries to convertible currency area (free foreign exchange area). Some of these figures would be available only through the efforts of our diplomatic and trade agencies abroad. These were not available to us for a deeper and detailed analysis. We would recommend such a study be carried out.

10.8 Apart from the re-export of the goods by N.C.R. countries to convertible currency areas, cases have also been detected where goods were diverted from the high seas or from an intermediate port. These goods never reached the N.C.R. countries for which they were intended. This type of diversion may sometimes be in collusion with the Indian exporter and in proved cases, it may be possible to take some penal action against such exporters. In cases where the diversion takes place after the goods reach the N.C.R. countries, and where the exporter is not presumably aware of such diversion, no action would, however, be possible by the Customs authorities.

10.9 Most agreements now have a clause to the effect that the exports under them are meant for use in the importing countries and shall not be re-exported to another country. Whenever reports of alleged re-exports have been received, the matter has been taken up with the concerned foreign Government. The Ministry of Foreign Trade informed us that in some cases the Government concerned have also confirmed that they would take necessary action against their enterprises, if found guilty. It would be reasonable that in cases where both the contracting countries are satisfied that such re-export or diversion has, in fact,

taken place, the payment for such diverted goods is made in free foreign exchange by the country from where the diversion or re-export takes place. It would be worthwhile to explore the possibility of arriving at such an understanding.

10.10 We understand that at the annual trade talks when growth of trade under bilateral agreements is planned for the coming year, in planning commodity-wise growth domestic requirements of the country concerned are also taken into account. In spite of these measures, the practice of diversion is fairly prevalent though there are a few countries covered by such agreements from where such diversion, to the best of our information, has not taken place. A better assessment of the genuine domestic requirements of the countries concerned seems to be necessary.

10.11 The bilateral trade agreements are a part of Government's overall trade policy and have their own advantages as also their problems. It would be for the Government to examine the various aspects of this trade from an overall point of view and in the totality of our trade. But from the point of view of the problem which is the subject of our study, we would, apart from what we have recommended in the foregoing paragraphs, suggest that in respect of commodities, where diversion is strongly suspected, the quota ceiling fixed for the commodity in the bilateral agreements with the country should be reduced to a realistic level and be strictly adhered to. For that purpose, inclusion of the sensitive commodities under Export Trade Control can be considered.

CHAPTER — XI

PERSPECTIVE

11.1 Our examination of the problem of leakage has been confined to leakage through manipulations in trade channels, including underinvoicing and over-invoicing. In the preceding chapters we have attempted to examine this, in its various aspects, as comprehensively as possible, and have made various suggestions — legislative, administrative, organisational and procedural — to plug loopholes and remedy existing deficiencies. We believe that our suggestions, if implemented, will greatly improve the situation in the area with which they are concerned. We are aware, however, that by themselves these measures provide no enduring solution, because the problem we have attempted to tackle is part of a wider problem, which is complex and difficult. What we wish to stress here is that the problem as a whole needs to be tackled in its various aspects in a coordinated manner. We are under no illusion that it is easy of solution.

11.2 The basic problem arises from the scarcity of foreign exchange resources which, in a developing economy like ours, is likely to persist for some time to come. This scarcity is linked with the strategy for development to which the country is committed. With a limited earning capacity which we are repaidly trying to expand, there is great need for foreign exchange resources, particularly for the priority sectors in our national plans. Even as our earning capacity increases so will the requirement in the context of a faster pace of development. In this situation regulatory control on foreign exchange becomes inevitable; this creates substantial areas of unsatisfied demand which in turn provides pressures for the siphoning off of available foreign exchange into unauthorised channels. These various areas of demand have been broadly referred to in Chapter II. Smuggling is the largest claimant. Other motivations relate to the desire to create a nest egg abroad, tax evasion, money for foreign travel, the need for settling business claims expeditiously, and the purchase of small quantities of spares that can be smuggled in. Finally, of course, there is the desire on the part of some who wish to make fast non-taxable profit by exploiting the gap between the official and the black-market rates of exchange.

11.3 It is not our objective in this concluding chapter to suggest solutions for effectively tackling these areas of demand, or decreasing pressures there. This is a matter which has separately been engaging the anxious attention of the Government. What we would like to state is only this: to the extent possible, policy measures for reducing the pressures in some of these areas without too much cost to the economy, are worth exploring. From our own narrower point of view, a reduction in such pressures would secure a corresponding decrease in invoice manipulation.

11.4 As an instance, we would mention that at present procedures for importing small quantities of urgently needed spares, or settling small claims

of foreign buyers, or meeting the expenses of offices legally set up abroad, are somewhat irksome and time consuming. We believe many businessmen resort to invoice manipulation to avoid these procedural delays for requirements that are comparatively simple. We feel that an appropriate simplification of these procedures would decrease some of these pressures. This is also true in the area of foreign travel. The recent liberalisation of such travel has created new pressures for illegal foreign exchange. We realise it is not possible to satisfy the full demand in this area, but some liberalisation for requirements which are bonafide and justified might be helpful in taking off some of the pressures, at not too great a cost.

11.5 Another area for consideration, and it is a very significant area, is inward remittances. We realise it is difficult to make such remittances more attractive without endangering the external value of the rupee, and we are aware that various inducements,to an extent that is safe, have already been provided. We would recommend, however, that this matter can be kept under observation, because the amounts involved here are really large. We are not in a position to make concrete suggestions in any of these fields; what has been mentioned above are illustrative pointers in regard to areas where continuing consideration at policy level is necessary.

11.6 Smuggling deserves special mention, being the largest single activity which draws off supplies of foreign exchange. The drive to combat this evil, which saps the vitality of the economy, needs to be given the highest priority, including resources for improved organisation in the fields of enforcement, policing, and detection. Here again there is some possibility of taking off the pressure by importing in small quantities certain goods that with the rising standard of living are in great demand and for which the consumer is prepared to pay large sums of money which justifies the risks the smuggler takes. Such imports of a few items would help to meet this demand partly, and bring down the prices sufficiently to make the risk of smuggling too high a cost to pay. We have here in mind items like watches or polyster fibre, the consumer demand for which it is not yet possible to meet by indigenous production.

11.7 In all the areas of demand that we have mentioned, for which many unauthorised channels have been created, we would underline the great importance of stronger enforcement measures, coupled with better intelligence; also for screening of the relevant procedures, regulations and laws on the lines that we have attempted for invoice manipulation in this study. Such an effort we feel will produce results.

11.8 In conclusion, we would like to stress the importance in this entire field of educating public opinion about the grave economic consequences to the country of the actions of malefactors, who divert foreign exchange illegally. At the moment, sufficient social odium does not attach to this malpractice. We believe that a properly directed and sustained campaign to create public

consciousness about what is at stake in terms of the economic well-being of the country would yield rich dividends.

(M.G.KAUL)
CHAIRMAN

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MEMBER

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MEMBER

(M.G. WAGH)
MEMBER

(J. BANERJEE)
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(M.P. SINGH)
MEMBER

(R.P. CHATTERJEE)
MEMBER

(R.C. MISRA)
MEMBER—SECRETARY.

SUMMARY OF RECOMMENDATIONS

Chapter III — Areas Vulnerable To Invoice Manipulation.

1. A systematic and continuous study is called for to indentify areas where the scope or the possibility for manipulation of values is greater. (3.1-3.3, 3.8)

2. Import or export transactions between parties closely associated over a period of time should be scrutinised more closely to ensure that the values are not unduly low. (3.4)

3. Where the same party is operating at the two ends as importer and exporter under different names, apart from a careful scrutiny of documents and comparison of values, the concerned agencies must rely on systematic collection of intelligence to detect manipulation. (3.5)

4. Transactions between parties financially linked need specialised examination. On the pattern of the special branch on the import side, there should be a similar unit on the export side also to examine the books of accounts of Indian exporters having financial links abroad to determine the impact of such links on the values of the goods exported. (3.6 & 5.9)

5. In cases of technical collaboration between the importer and the exporter, apart from the need for exercise of great care in approving the rates of royalties, the values should be examined with particular care to be sure that a part of the consideration for the goods is not being adjusted against payment of royalties. (3.6)

6. The Reserve Bank should have adequate expertise and a thorough knowledge of the international practices with regard to the rates of agency commission for different commodities under different arrangements in various countries. (3.7 & 7.22)

7. The special valuation cell, proposed to be set up (refer. Ch. VI) should also collect data regarding the prevailing international trade practices in respect of agency commissions for different commodities and supply that information to the Reserve Bank. Reserve Bank should have proper coordination with this cell. (3.7 & 7.22)

8. The Export Special Branch (refer Chap. 5.9) should, while examining the books of accounts, also keep in view the possibility of manipulations in respect of agency commissions. (3.7 & 7.22)

9. Where according to the terms of the contract the final settlement of price is dependent on quality analysis, weighment or similar other factors which are to be determined abroad, as in the case of ores, the trend of the analysis results (pre-shipment and post-shipment) should

be systematically studied with a view to finding out whether the results are manipulated or not. (3.10 & 3.35)

10. The appraising officers should examine the various terms and stipulations in the contract closely with a view to assessing their impact on the values of the goods and to get an idea of the net and final consideration for which the goods have been sold. (3.11)

11. While permitting a remittance on account of 'overprice', the Reserve Bank should ensure that it is a genuine case of overpricing and the exporter has not inducted his own man abroad for the purpose of sending remittance in the guise of 'overprice'. (3.12)

12. Imports made by the local agent of a foreign supplier or any other party under a letter of authority issued in his favour against an import licence of a government department or a public undertaking should be looked into more carefully to check that they are not overinvoiced. (3.15)

13. Trade with countries where there are no currency restrictions or exchange control is not strict, being more susceptible to invoice manipulation, needs to be watched carefully. (3.18)

Under-invoicing of exports.

14. The procedure for advance registration of contracts of jute goods should be compulsory and there should be follow-up action to relate contracts to actual shipments. (3.26 & 8.9)

15. There should be a more rationalised system of physical examination of jute goods at the manufacturing or packing stage, in coordination with the export inspection council authorities, with a view to reducing the scope of manipulation of export values by misdeclaration of construction, yardage or weight of such goods. (3.27)

16. As regards garden tea shipped on consignment basis and sold in London auction —

(i) we should send observers to watch that the auctions take place under open and competitive conditions;

(ii) our staff abroad should check that the auction prices are correctly reflected in the brokers' publications, and

(iii) the auction prices should be properly correlated with the sale prices mentioned in the account sales furnished to the Reserve Bank. (3.29 & 8.17)

17. As for tea purchased in Calcutta auction and then exported, some supervision should be exercised from the auction stage onwards to help in the proper correlation between the auction prices and export prices. (3.30)

18. In case of unblended tea which is shipped at prices fixed on the basis of tenders invited from abroad, the Customs authorities should ensure that the export prices are in accordance with the prices quoted in these tenders. (3.31)

19. The Customs authorities should compare the values of garden tea exported by producers directly to related parties without the intervention of auction with the export prices of the same quality tea from the same garden sold to independent buyers. (3.32)

20. As weighment of ores, based on draft weight of the vessels, leaves scope for manipulation, a more satisfactory arrangement for weighment should be evolved. (3.35)

21. To reduce the possibility of manipulation of values in the export of unmanufactured tobacco, the following measures could be usefully considered:—

(i) Improvement in gradation to bring about standardisation to the extent possible so as to facilitate comparison and check of values;

(ii) fixation of realistic floor prices;

(iii) the feasibility of introducing the system of auctions akin to tea trade and failing that on the pattern of the system in vogue in the coffee trade;

(iv) examination of books of account of the exporters by Export Special Branch to find out the true nature of the relationship between the exporters and the foreign buyers; and

(v) where final price is not settled prior to export, the goods should be exported on consignment basis. (3.39 & 8.19)

22. Proper market intelligence in respect of final sale price of frozen shrimps in U.S.A. should be made available to the Reserve Bank so as to ensure that the actual sale price is brought back and that 70% or 80% provisionally realised price does not become the final sale price and the balance adjusted somehow. Similar market intelligence is also necessary regarding the prices prevalent in Hongkong and Singapore for shark fins exported from India. (3.43)

23. R.B.I. should also ensure that the deduction on account of agency commission or other expenses is not in excess of the usual rates allowed for marine products. (3.43)

24. As there are numerous grades and qualities in each of the spices and the price fluctuations are wide, standardization of qualities, collection of value information internally and from abroad coupled with proper scrutiny of the terms of the contract will make the valuation task easier and more effective. Compulsory advance registration of contracts would also be useful. (3.44)

25. It should be insisted upon the exporters that they declare the size, colour, cut and perfection of the diamond in invoice. (3.48)

26. In the shipping bill, in addition tothe export value, the exporter should be asked to declare the local market value of the diamonds. (3.48)

27. The exporter should, in addition to the loaded value, be asked to declare the fair value of the precious stones which, after being checked by Customs, would provide a basis for the Reserve Bank to verify the correctness of the final sale price of such stones. (3.49)

28. In the case of exports of handicrafts and artware of standard varieties, sufficient expertise with the Customs authorities is necessary. In case of need, assistance of the All India Handicrafts Board may be sought. (3.50)

29. With regard to sophisticated items of handicrafts and artware, the difficulty in valuation can be obviated, to some extent, by making suitable enquiries in the trade and by checking the procurement prices of those goods in India. (3.50)

30. Misuse of the facility of export as gift by post or through baggage could be tackled by developing proper intelligence and also by exercising a more vigilant check. (3.50)

31. With regard to engineering goods, quality of valuation check could be improved by better expertise at the assessing level and by providing a systematic and regular inflow of information in respect of the value of such goods in India and abroad. In doubtful cases, examination of the costing figures may be resorted to. (3.52)

32. As regards valuation of chemicals and allied products, it would be desirable for the Customs authorities to keep in close touch with the Export Promotion Councils who have some correspondents abroad and who are better informed with regard to the values of items with which they are concerned. (3.54)

33. The Coffee Board should resume the practice of examining the particulars of sales effected by the exporters of coffee to their foreign buyers and compare the export realisations with the value at which the exporter bought coffee in the export auction. (3.56)

34. The Government should examine the feasibility of the Coffee Board entering into the export trade. (3.56 & 8.18)

35. Valuation check with regard to hides and skins (undressed) imported into India should be more rigorous. (3.60)

36. The Customs authorities need to have a better idea of the normal range of discounts for the different categories of books, such as fiction, technical literature. (3.62)

37. Values of goods imported under open general licences need to be carefully checked from over-invoicing angle. (3.63)

Chapter IV — The Scheme of Exchange Control in relation to Imports.

38. In cases where the import documents are directly received by the importer and not through banking channels, the Reserve Bank should ensure that the exchange control copy of the bill of entry is submitted to it and there is no lapse in this regard, and where the bill of entry is not produced by the importer within the stipulated period without proper justification, suitable action is taken against such importer. (4.10)

39. The registered exporters' schemes should be kept under review so that they do not develop impetus or scope for the type of malpractices that could be perpetrated under the erstwhile export promotion schemes. (4.14)

40. Steps should also be taken to ensure that the import licences are issued strictly in terms of the Registered Exporters Schemes. (4.14)

41. While issuing licences to the nominee of the merchant exporter, the capacity of the nominee to utilise the licensed goods should be kept in view. (4.15)

42. In view of its usefulness, the audit scrutiny by the cell of the Department of Economic Affairs in respect of import licences issued under the registered exporters' schemes should be stepped up to about 15%. (4.16)

43. An exporter who repeatedly does not realise the sale proceeds should be debarred from obtaining the benefits available under the Registered Exporters' Scheme as provided in Clause 8 of the Imports (Control) Order. (4.17)

44. In fraudulent cases, besides the action which may be taken against the exporter under the F.E.R.A. for non-repatriation of the export proceeds, action should also be taken under the Imports & Exports (Con-

trol) Act for contravention of Clause 10(d) of the Imports (Control) Order. (4.17)

45. Directorates of Industries of the State Governments should give security numbers on the applications for licences forwarded by them to the licensing authority. (4.20)

46. There should be a central enforcement machinery for checking the capacity of industrial units and the utilisation of the goods imported by such units against Actual User Licences or under Registered Exporters' licences (4.21 — 4.23)

47. Imports & Exports (Control) Act may be amended empowering the Import Trade Control Authorities to impose fines and penalties in departmental adjudications in cases of misutilisation of the goods imported against Actual User's Licences. (4.23)

48. Investigations should be completed with utmost expedition in cases where licence has been obtained fraudulently or on misrepresentation of facts. (4.24)

49. The Chief Controller of Imports & Exports should be given legal power to suspend the operation of import trade control licences for a limited period, pending investigations, when he is, prima facie, satisfied that the licence was obtained on fraudulent misrepresentation. (4.24)

50. Suitable changes in the law be made to make the position clear that the cancellation of a licence obtained on fraud or misrepresentation is retrospective in its operation. (4.24)

51. Intimations regarding cancellation of licences should be sent periodically to the Customs authorities and the authorised dealers. (4.24)

52. In order that a cancellation of licence is not lost sight of by the Customs authorities or the authorised dealers, it may be worthwhile if a list of the licences cancelled or proposed to be cancelled is compiled alphabetically every week or fortnight depending upon the number of licences cancelled and every such fresh list should be a consolidated one incorporating the previous list. (4.24)

53. Both the sponsoring and the licensing authorities should take meticulous care to ensure that a licence is not issued for a value higher than that for which it should have actually issued. (4.25)

54. Inclusion of quantity as a limiting factor in licences may be considered for goods which have a higher margin of profit in India and where temptation exists for bringing more goods by under-invoicing. (4.25)

55. The authorised dealers should insist on the production of exchange control copy of the bill of entry in all those cases where the payment

has been made in advance and not against shipping documents or where remittances are made against open general licence or in respect of commodities which are freely licensable and are non-dutiable or the duty is not leviable on ad valorem basis. (4.28)

56. If the bill of entry is not submitted within a stipulated period, the authorised dealers should report the matter to the Reserve Bank who, in turn, will refer the matter to the Foreign Exchange Enforcement Directorate for necessary action. (4.30)

57. The Customs authorities should introduce a system of regular scrutiny of the menifest of every vessel with a view to taking follow-up action in respect of imported worthless goods which are abandoned. (4.31)

58. The Reserve Bank should issue instructions to the authorised dealers to ensure that the letters of credit have a specific stipulation that payment would not be made to the foreign supplier unless the bill of lading clearly specifies the name and address of the importer in India and the name of the authorised dealer. (4.31)

59. Payments should be received by the authorised dealers from the importers only by cheques issued on account of the importer. (4.31)

60. The authorised dealers should send every month a tabular statement giving details of the remittances, the name of the person making the payment, the bill of lading number and the vessel's name and voyage. (4.31)

61. Each Custom House should have a small unit which could take stock of the abandoned goods with a view to initiating necessary enquiries and action against the person who made valuable remittance against the abandoned goods. (4.32)

62. All cases where worthless goods are imported and abandoned after detection should be reported by the Customs to the Reserve Bank and the Foreign Exchange Enforcement Directorate for necessary action. (4.35)

63. Section 4(3) of the F.E.R.A. may be amended to provide that where a person makes a remittance against an I.T.C. licence without importing any goods or imports worthless goods, it shall be presumed that he has used the foreign exchange released to him for a purpose other than that for which it was so released. (4.34)

64. Customs officers should be suitably instructed that the stress should be on the correct valuation of the goods from all angles, and any deviation from the same, unless it is marginal or bona fide, should be viewed seriously. (4.35)

65. The Reserve Bank should issue instructions to the authorised dealers to furnish an attested copy of the invoice to the importer even before the documents are retired by him. (4.37)

66. The Customs officers should insist on the production of the bank attested invoice before finalising the bill of entry. (4.37)

67. Apart from the market enquiries to be made by the concerned officer, there should be a regular system for collection of valuation data from different sources in India and abroad and its dissemination to the concerned appraising officers and for this purpose a special valuation cell may be set up. (4.38, 5.12 & 6.1)

68. The D.G.T.D. should exercise some valuation check while recommending issue of licences for machinery and capital goods. (4.60)

69. Before issuing an import licence for capital goods and heavy electrical plants exceeding a particular value, tenders should be invited or quotations obtained so that an idea can be had as to the values of comparable equipment emanating from different sources. For licences issued under free foreign exchange, global tenders should be invited and for others, tenders should be invited from the particular country or area from which the import is to be made. (4.40 & 3.58)

70. Foreign exchange for import of machinery and that for freight and insurance should be released separately. The importers of machinery should be asked to furnish invoices indicating separately the f.o.b. value, freight and insurance. (4.41)

71. Where practicable, the capital goods licence should mention not only the c.i.f. value of the machinery, but should bear an endorsement that the freight and insurance payable shall not exceed the amount specified in the licence or the actual freight or insurance charges, whichever is lower. (4.41)

72. Appropriate statutory provision should be made to make over-invoicing of imports an offence. (4.43)

73. Section 112 of the Customs Act should be amended to provide that the penalty imposable could also be related to the extent of misdeclaration of value. (4.44)

74. The authorised dealers and the Customs authorities should satisfy themselves that the import licence against which the remittance is being sought or clearance requested was validly issued by a competent authority. (4.45)

75. The list of licences should be circulated in time by the office of the Chief Controller of Imports & Exports. (4.45)

CHAPTER V — Export Valuation.

76. Suitable instructions should be issued to the Customs authorities emphasising upon them the importance of valuation check of export goods in all respects keeping well in the fore front the foreign exchange angle also. (5.1, see also 4.35)

77. Valuation check in exports should be exercised even at the primary level by an appraiser. (5.1)

78. It should be ensured that the exporter fills each and every column of the prescribed form (G.R., P.P. & E.P.) specifically and where no discount or commission or any other deduction is to be made in favour of the foreign buyer, he should specifically state this in the form. (5.4)

79. The Customs authorities should indicate on the prescribed form itself whether they have allowed the discounts or other deductions entered in the prescribed form. (5.4)

80. The R.B.I. or the authorised dealers should not permit any deduction on account of discount at a later stage unless the same has been declared by the exporter in the prescribed form and has been accepted by the Customs authorities. (5.4)

81. Save in exceptional cases, the Reserve Bank should not allow any remittance on account of agency commission unless the same has been shown in the relative form. (5.4)

82. Even in exceptional cases, the Reserve Bank should not permit remittance for agency commission without consulting the Customs authorities unless the rate of commission is small and it is covered by an agreement already registered or approved by the Reserve Bank. (5.4)

83. While dealing with a request for remittance on account of agency commission, it should be verified that the commission was not already deducted from the invoice value declared in the prescribed form. (5.4)

84. The Export Valuation Departments of the Custom Houses should be considerably strengthened keeping in view the meticulous check to be exercised by them of the values, from all angles, including from the point of view of foreign exchange realisation. (5.7)

85. On the pattern of the import appraising groups, Export Department should also have different specialist groups dealing with specific commodities and some of the officers manning these groups should be recruited as experts in the particular lines of trade. (5.8 & 3.52)

86. The officers concerned with the valuation of goods imported and exported should be given training periodically with regard to the technology, know-

how, commercial practices and the qualities of the commodities with which they are concerned. (5.10, 3.36, 3.45, 3.60 and 4.42).

87. The appraising officers concerned with the export valuation should be kept on a particular job for a reasonable length of time. (5.11)

88. It is of utmost importance that Customs officers should examine all the terms of the contract with meticulous care and then take a view about the correctness of the declared value. (5.13)

89. It is necessary to bring home to the Customs officers the significance of scrutiny and verification of freight and insurance. They should examine not only the freight sheets but also the terms of the charter party or terms relating to despatch/demurrage which affect the quantum of freight. (5.14 & 3.35)

90. Customs authorities should ensure that the net value, after deduction of the discount/commission/rebate/over-price, or any other deduction, is the proper and correct value of the goods. (5.15, 3.12, & 3.13)

91. As in the case of imports, much better correlation is necessary between documentary and physical check of goods exported. (5.16)

92. There is need for a more intelligent and planned selectivity in ordering physical examination of the goods having regard to the commodity, the exporter, the nature of the transaction and the destination. (5.16)

93. Where physical examination discloses any discrepancy in the declaration of the exporter, a record of such results should be maintained and constantly reviewed at a high level in the Custom House with a view to evolving a more planned direction with regard to the physical check of goods. (5.16)

94. Customs authorities should have a better liaison and better coordination with Export Inspection Council. (5.17 & 8.24)

95. Customs requirements of examination of goods, where possible, should be dovetailed with the inspection by the Council. Steps will also have to be taken to ensure that there is no substitution of goods after the inspection by the Council. (5.17 & 8.24)

96. Customs should evolve a policy with regard to drawing and retention of samples of commodities vulnerable to under-invoicing for a post-export scrutiny. (5.18)

97. Any rigid or artificial approach in delimiting the scope of the term 'full export value' is not desirable. (5.19)

98. Section 12(5) of the F.E.R.A. should be amended to empower officers of Customs to prevent exports and to give directions regarding withhold-

ing the shipping documents in specified situations. This power should be entrusted to an officer not below the rank of Deputy Collector of Customs. This decision should also be subject to appeal and revision under the Customs Act. (5.21)

99. Where the exporter agrees to amend the value, he should be asked to furnish a revised contract and invoice, failing which to produce evidence to show that the buyer abroad is willing to pay the higher price. Even where the contract is not revised, the invoice must be revised to ensure repatriation of the amended value. (5.22)

100. It should be made legally possible to take action in cases of under - invoicing/over-invoicing detected on post-export scrutiny without regard to the period of limitation envisaged in Section 130 of the Customs Act. (5.24)

101. A provision should be made in the F.E.R.A. empowering the Government to issue directions to the effect that the exporter will not sell the goods exported on consignment basis, without obtaining prior permission of the Reserve Bank, at a price which is lower than the value declared in the prescribed form by specified margin which would be different for different commodities. (5.27)

102. In such cases, the Reserve Bank could usefully draw upon the expertise and the valuation data available with the Customs in order to form a judgment as to whether the sale at the reduced price should be allowed or not or whether the goods should be assigned to the Central Government or to some other person in terms of Section 12(3) of the F.E.R.A. (5.27)

103. The officers posted abroad could also be asked to give their comments on the application of the exporter after verifying on the spot whether there was any justification for selling the goods at the lower price as indicated in the exporter's application. To some extent the power to permit such sales could be delegated to these officers. (5.27 & 3.49)

104. The decision on the request seeking permission for sale of the goods below the stipulated range ought to be communicated to the exporter within the shortest possible time. (5.27)

105. There should be power in law for the Government not to permit export on consignment account of any particular commodity or by a particular class of exporters as may be notified. (5.28)

106. The Reserve Bank machinery for checking the final sale values of consignment exports should be considerably strengthened. (5.29 & 3.9)

107. It will be useful to induct into the Reserve Bank staff deployed for checking final sale values of consignment exports, on temporary depu-

tation, at appropriate level, officers of Customs having necessary expertise and experience in valuation work. (5.29)

108. Except in cases where any variation in price is sought on account of post-export factors, the Customs judgment regarding the value should be final and the Reserve Bank should not allow any change in value without consulting the Customs authorities. (5.32)

109. Variations in price on account of post-export factors should continue to be dealt with by the Reserve Bank and in specified areas by the authorised dealers. (5.33)

110. R.B.I. should take the help of the officers to be posted abroad for ascertaining whether the post-export reduction in price has been claimed on a genuine ground or not. (5.34)

111. The authorised dealers should have powers to allow deductions from price only in such cases where a question of discretion is not involved but is merely a question of arithmetical calculation flowing from the terms of contract and post export data made available to them. (5.35)

112. There should be periodical meetings of the officers of the R.B.I. and Customs to discuss specific controversial cases and also the problems relating to streamlining of procedure, valuation of consignment exports, scope and nature of reduction to be allowed by the R.B.I. and other allied matters. (5.36)

113. The expression in Section 12(2) of the F.E.R.A., viz. "The full amount payable by the foreign buyer in respect of the goods" should be substituted by the words " the full export value of the goods". (5.37 & 9.13)

114. The prescribed forms should be immediately amended to make the same in conformity with the language of Section 12(1) of the F.E.R.A. as amended. (5.37)

CHAPTER VI — Special Valuation Cell

115. For the purposes of collection of valuation data, its collation and dissemination to the Customs appraising officers, a Special Valuation Cell in the Customs organisation may be set up. (3.7, 3.9, 3.38, 3.42, 3.52, 3.60, 4.38, 4.42, 5.12 & 6.1)

116. The Special Valuation Cell should have subsidiary cells at four major ports, namely, Bombay, Calcutta, Madras and Cochin, each cell dealing with the commodities mainly exported through that port. (6.2)

117. In order to provide coordination of the work of these cells at four places, there should be a Director of Valuation at headquarters unit at Delhi. (6.2)

118. For the purposes of securing commercial intelligence on a regular basis from abroad, Customs officers trained in valuation work should be posted at important centres abroad. For places not of crucial importance arrangements for securing information can be made with our embassies. (6.4)

119. To begin with, these officers could be posted at important centres abroad where such officers are not already posted, e.g., Tokyo, Singapore, Tehran, Nairobi, Frankfurt, New York, Montreal. Each centre could cover a specified zone. (6.5)

120. In selecting officers for this assignment, preference should be given to aptitude for and experience in valuation work. (6.5)

121. The services of these officers should also be utilised for performing some allied functions such as furnishing information in specified disputed cases, settlement of quality claims or other claims of similar type, exploring the possibilities of sales of goods assigned to Central Government or to any other person in terms of the provisions of the F.E.R.A. in cases where exporters make requests for sale at reduced prices and such other information as the Customs, the Valuation Cell, the Reserve Bank, the Enforcement Directorate of the C.B.I. may require with regard to the values and repatriation of sale proceeds. (6.6)

122. As regards the collection of information within the country, the Special Valuation Cells should keep a liaison with the Appraising Department of the Custom House, the export promotion councils, commodity boards, leading brokers, auctioneers' associations, Chambers, State Trading Bodies and other leading exporters of particular commodities. (6.7)

123. The Cell could have a small staff to collect unpublished valuation data from different local sources and make market enquiries, wherever necessary. (6.7)

124. The Special Valuation Cell should also have arrangements for the collection of statistical data regarding the values at which goods were allowed to be exported at different ports. (6.8)

125. Computers may be arranged for the Cell. (6.8)

126. The material collected from different sources should be sifted, collated, interpreted and consolidated by the cell in a form convenient for reference. (6.9)

127. For the purpose of specifying the qualities of the export goods to facilitate comparison of valuation data, help of Export Inspection Council should be taken. (6.9)

128. The Special Valuation Cell, while disseminating the consolidated valuation data to the field formation, should also indicate for the guidance

of the appraising officers the correctives which need to be applied by them in making use of such data. (6.9)

129. The Special Valuation Cell should ensure that whatever is urgent is disseminated to the concerned appraising officers immediately without waiting for its collation and even for the digested information the time lag between the receipt and its supply should always be as short as possible so that it may not become out of date. (6.10)

130. Such data should also reach the minor ports quickly. (6.10)

131. Dovetailing to the extent possible of the two organisations namely Special Valuation Cell and Central Exchange suggested by the Customs Study Team may be considered. (6.11)

132. The Special Valuation Cell should be invested with legal powers only for the purpose of collection of valuation data and for eliciting information. (6.12)

133. The Special Valuation Cell should also undertake post export scrutiny of all shipping bills with the help of the computer to spot deviations in values beyond a particular margin. (6.13 & 5.23)

134. With a view to compare the prices of goods of identical quality by the computer, suitable modifications may be made in the form of the shipping bill, so that full details of the quality of goods exported could be indicated therein. (6.13)

135. It should be made mandatory for the exporter to attach an extra copy of the contract invoice with the shipping bill. (6.13)

136. The Special Valuation Cell should not associate with the investigations of cases of deviations in value, thrown up in post-export scrutiny, but should refer such cases to the investigation agency of the Custom Houses who would initiate necessary penal action,if warranted. (6.13 & 6.14)

CHAPTER VII — Exchange Control on repatriation of the value of the goods exported.

137. The Customs authorities should take particular care to see that there is no delay in forwarding shortshipment intimations to the R.B.I. (7.4)

138. The Customs authorities should take care in using the proper form while sending such intimations so that a case of change in the name of the vessel does not get treated as a case of short-shipment in the Reserve Bank. (7.4)

139. In order that there is control over the movement of the original forms G.R.I. & E.P. up-to the stage of coding either the Customs serial

number or the corresponding serial number given by the Reserve Bank should find place in the code sheets. (7.6)

140. There should be supervision at a higher level both in the Customs as well as in the Reserve Bank to ensure that there is no scope for any kind of malpractice with regard to the transit of the original form from the Customs to the Reserve Bank. (7.6)

141. The system of security numbers introduced at Bombay should be introduced at all ports immediately. (7.7)

142. For minor ports, procedure should be evolved to ensure that the forms relating to the shipping bills passed on a particular day are despatched to the Reserve Bank on the same day or latest by the following day. (7.7)

143. The procedures for ensuring receipt of duplicates and triplicates should constantly be kept under review and modified as and when necessary in the light of the results obtained. (7.12)

144. The system of punching and computerisation should be improved so as to ensure that the non-receipt of the forms and shortfall in the realisation are correctly reflected in the lists prepared. (7.15)

145. Where duplicates and triplicates are not received in time, reminders should issue promptly and cases of non-realisation or unexplained delay in realisation of the sale proceeds should be referred to Enforcement Directorate without any undue loss of time particularly if there is reason to suspect that the export was made by a bogus party. (7.12 & 9.9)

146. In order to safeguard that the amount repatriated is in conformity with the value as determined by the Customs and also as a measure of additional scrutiny at the stage of export, the exporter should be asked to file all the three copies of the prescribed form with the customs authorities who should, after necessary scrutiny, endorse all the three copies. (7.16)

147. In cases where the customs authorities are not satisfied about the correctness of the full export value as declared, they should not only ensure amendment of the contract or the invoice, but should also see that the declaration in the column relating to invoice value in the prescribed form is correspondingly amended. (7.18)

148. The columns in the prescribed forms captioned 'rupee value' and 'invoice value' should be replaced by more appropriate expressions, such as 'Customs assessable value' and 'full export value'. (7.18)

149. Specific instructions should be issued to the authorised dealers asking them to check the terms of contract in each and every case and to ensure that the full amount payable by the buyer particularly where it

is higher than the initially declared value at the time of export is realised. (7.19)

150. The Reserve Bank should tighten up its machinery and procedures to enable it to take prompt and effective follow-up action in cases where the full export value is not realised within the prescribed period. (7.21)

151. The Reserve Bank should also keep the position under constant review and devise effective measures from time to time to ensure realisation of full export value within the prescribed period and to take prompt follow-up action in cases of non-repatriation within such period. (7.21)

152. While much scrutiny is not necessary in respect of small quality claims made by overseas parties, but in respect of large claims, the Reserve Bank should consult the Export Inspection Council who exercises quality check in respect of about 80% of the goods exported and customs who would have ordinarily examined the goods prior to export. (7.23)

153. The practice of permitting the declaration in the prescribed form to be countersigned in certain type of cases should be backed by an appropriate provision in the F.E.R.A. (7.24)

154. To guard against leakage of foreign exchange through exports by bogus parties, there should be a verification of the identity and antecedents of the exporter before he is assigned a code number by the Reserve Bank. (7.25)

155. The Custom House clearing agents also should, to some extent, be made responsible for verifying the status of his principal before taking the agency functions. (7.25)

CHAPTER VIII — Some Remedial Measures of General Nature.

156. From the point of view of the problem of leakage of foreign exchange through trade channels, feasibility of canalising the trade in the commodities which are particularly vulnerable to invoice manipulation, should be considered by the Government. For instance, canalisation of export of films, mica and shellac may be considered. (8.3 & 3.46)

157. Where canalisation is effected, it should be in reality and not merely in form. (8.4 & 3.14)

158. Where 'back to back' contracting is considered absolutely necessary and unavoidable during the transitory period, these periods should be kept to the minimum and canalisation brought in the real sense at the earliest opportunity. (8.4)

159. Even during the unavoidable transitory periods, the public undertakings

should enter the field of exports as one of the exporters trading in competition with the others of the private sector. (8.5)

160. The services of officers and correspondents of public undertakings abroad, particularly at places where no officers of Customs are posted, could be used to feed to the Special Valuation Cell, to the extent possible, regular information as to the prices and market trends. (8.6)

161. The services of these officers abroad could also be utilised to assist the Reserve Bank in the disposal of the goods which remain unsold after export and where the Reserve Bank exercises its power under section 12(3) F.E.R.A. (8.6)

162. Where an export commodity is made subject to advance registration of contract, the registration should be compulsory and may be given a statutory basis. (8.9 & 3.26)

163. There should be a system of following up the registered contracts till the actual exports are made under them. (8.9)

164. Extending the scheme of advance registration of contracts may be considered in those areas of exports where the market price is prone to frequent fluctuations particularly if the long term delivery contracts are the normal feature of the trade. Spices and cashew could be considered for inclusion in this scheme. (8.10 & 3.44)

165. With a view to maintaining the secrecy of the data presented for registration of contract and checking the values, the responsibility for registration must rest with some Government or semi-Government agency, such as commodity boards. (8.11)

166. Since Customs are finally responsible for checking the export value of the goods, their association with such a body is unavoidable and important. (8.11)

167. In respect of commodities for which there are no commodity boards, the Customs authorities could be made responsible for registration of contracts. (8.11)

168. Floor prices should be fixed realistically. (8.13)

169. Floor prices should be kept under constant review and revised in time. (8.13, 3.34, 3.39, 3.45, 3.51 & 3.55)

170. Customs authorities should be careful in checking the values even in respect of commodities for which floor prices are fixed. (8.14)

171. Floor prices should be fixed with reference to the precise grade or quality of the goods. (8.14)

172. The system of auction should be developed and encouraged and the authorities should help to create favourable conditions enabling the trade to take recourse to this system. (8.15)

173. It should be ensured that the auction is truly competitive and fair and that the authorities should be in a position to correlate the prices fetched at the auction with the value declared at the time of export for the same goods and that there are adequate safeguards against substitution. (8.16)

174. Feasibility of extending the system of sale by auction to other primary products where conditions referred to in paragraph 8.15 exist or could be created, should be explored. (8.19)

175. Having a commodity board for tobacco and reorganising the pattern of trade so as to provide for auction of the graded tobacco may be examined. (8.19 & 3.39)

176. The Customs authorities and the Reserve Bank should have close collaboration with the Export Inspection Council. (8.24, 5.17 & 7.23)

177. The Customs authorities should take the assistance of the council in classifying the qualities of various products according to their standards. (8.24)

178. The Customs appraising officers should acquaint themselves with the procedures followed by the Export Inspection Council with regard to to pre-shipment inspection and quality control. (8.24)

CHAPTER IX — Other Administrative and Legal measures

179. The existing system and machinery for collection of intelligence, in respect of under-invoicing and over-invoicing and about the activities of specific exporters and importers, from sources in India and abroad, needs to be suitably strengthened and improved. (9.1)

180. As for internal intelligence, a planned direction and closer coordination of the activities of the existing internal agencies concerned with fiscal and exchange matters are necessary. (9.1)

181. Greater attention should be paid by the intelligence agencies to gathering information and intelligence with regard to underinvoicing and over-invoicing. (9.1)

182. As for external intelligence, necessary intelligence net work may be built up with the officers to be posted abroad for making market studies and collecting valuation data constituting a nucleus. (9.1)

183. Save in specified type of cases which may have to be referred to Economic Offences Wing of C. B.I. Investigations of cases relating to

under-invoicing/over-invoicing should continue to be handled by the concerned agencies of Customs and Enforcement Directorate. (9.2)

184. The strength of the appraising investigation units in the Custom Houses should be augmented to cope with the anticipated increase in the investigation work. (9.2)

185. The prosecution cells in the field establishments of the Customs and Enforcement Directorate should be considerably augmented and strengthened both quantitatively and qualitatively. (9.3)

186. Sensitive cases which, apart from the element of underinvoicing and over-invoicing, may have other wide ramifications, or at times may have elements of fraud or connivance on the part of government officials, should be referred for prosecution to the Economic Offences Wing of C.B.I. (9.4)

187. It would be desirable that the Economic Wing of C.B.I. should have on its staff some officers who have adequate expert grounding in technical valuation work. (9.4)

188. In order to enable the C.B.I. to complete the investigations expeditiously within the period prescribed under section 110(2) of the Customs Act and also to cope up with the increased tempo of investigations/ prosecutions in bigger cases, some augmentation of its Economic Offences Wing with officers and staff of adequate experience will be necessary. (9.5)

189. Government may consider having a provision for constituting a bench of more than one officer for adjudicating important and complicated cases of under-invoicing and over-invoicing involving heavy amounts. (9.6)

190. Both under the F.E.R.A. and the Customs Act, offences involving xxxxx under-invoicing/over-invoicing should be made punishable to sentences of imprisonment in all cases and any fine imposable by the court should be in addition to imprisonment and not as an alternative to imprisonment. (9.7)

191. For cases of under-invoicing/over-invoicing involving a loss of foreign exchange of Rs.1 lakh or more, a minimum sentence of six months and the maximum of five years should be prescribed. (9.7)

192. The Customs Department and the Enforcement Directorate should lay down guidelines for deciding as to the cases in which prosecution be launched. (9.7)

193. There should be periodical meetings between the officials of the minor ports and maior ports to discuss common problems. (9.8)

194. Strength of the Enforcement Directorate should be augmented to enable it to concentrate with greater vigour on breaking the vicious circle of illegal dealings in foreign exchange and to discharge its increased responsibilities. (9.9)

195. There should be at least two officers at Director's level in the Enforcement Directorate one supervising the investigation work and the other dealing with adjudicaions. Legislative changes necessary for this purpose may be made. (9.10)

196. In respect of smaller cases of adjudication, the adjudication functions may be delegated to junior officers of the Enforcement Directorate at a suitable level. (9.10)

197. Section 23 of the F.E.R.A. be amended to raise the maximum penalty imposable by the Director of Enforcement to five times the foreign exchange involved. (9.11)

198. Suitable provision be made in the F.E.R.A. providing for imposition of penalty on every person concerned in the offence. (9.11)

199. Like the Customs Act, there should be a provision that for an offence under the F.E.R.A. both adjudication by the Director of Enforcement and conviction by a court of law are possible. (9.12)

200. In more and more cases, apart from adjudication, prosecution should be launched. (9.12)

201. The Enforcement Directorate should have the wherewithal to deal with the majority of prosecution cases. (9.12)

202. The words in section 12(2) "no person entitled to sell or procure the sale of" should be replaced by a more appropriate expression. (9.13)

203. Sections 337, 338, 339, and 339A of the Criminal Procedure Code may be amended to provide for tendering of pardon to accomplices in cases relating to contravention of Customs & Foreign Exchange Laws. (9.14)

204. In the F.E.R.A. a provision should be made to the effect that Foreign Exchange offences shall be non-cognizable, notwithstanding anything contained in the Code of Criminal Procedure. (9.15)

205. A provision should be made in the F.E.R.A. to provide for summary trial of the foreign exchange offences, barring those for which the maximum punishment is to be 5 years. (9.16)

206. Rules should be framed for publication of the names of offenders in Customs cases relating to under-invoicing or over-invoicing in exports and imports. (9.17)

207. Such persons (206 ibid) should be debarred from getting any facilities or concessions which are given to exporters or importers under certain schemes. (9.17)

208. Provisions of the Customs Act and F.E.R.A. should be suitably amended to provide for admissibility, as evidence in court, of the documents received from abroad, and for raising similar presumption in respect of them as are now raised under Section 139 of the Customs Act and Section 24A of the F.E.R.A.

209. A suitable provision be made in the Passport Act to provide for refusal of the issue of passport or for impounding a passport, if already issued, to persons against whom investigations for offences relating to under-invoicing/over-invoicing have been instituted. (9.19)

CHAPTER X — Problems relating to Bilateral Account Trade

210. There should be as strict a check in the valuation of the goods exported to or imported from N.C.R. countries as that in the case of the goods exported to or imported from free foreign exchange area. (10.2)

211. Market intelligence with regard to the value of goods exported by the N.C.R. countries to other countries who are not covered by bilateral agreements should be collected. (10.3)

212. It may be worthwhile exploring the possibility of having a clause in the bilateral agreements which has the effect of ensuring that the contracting parties export the goods to each other at prices which are comparable to prices of similar goods exported by them to other countries not covered by such agreements. (10.3)

213. To the extent possible, the exports to and imports from countries covered by N.C.R. agreements, where a single trading agency operates, are handled at our end also by a single public sector agency. (10.3)

214. A detailed study of the problem relating to diversion of exported goods should be carried out. (10.7)

215. It would be worthwhile to explore the possibility of arriving at an understanding that in cases where both the contracting parties are satisfied that diversion has taken place, the payment for such diverted goods is made in free foreign exchange by the country from where the diversion or re-export takes place. (10.9)

216. A better assessment of the genuine requirements of the countries covered by bilateral agreements is necessary. (10.10)

217. In respect of commodities where diversion is strongly suspected, the quota ceiling fixed for the commodity in the bilateral agreements with

the country should be reduced to a realistic level and be strictly adhered to. (10.11)

CHAPTER XI

218. To the extent possible, policy measures for reducing pressures in some of the areas of demand, without too much cost to the economy, are worth exploring. (11.3 & 11.4)

219. Stronger preventive and enforcement measures are necessary against smuggling and other areas of consumption of unauthorised foreign exchange. (11.6 & 11.7)

220. Public opinion should be educated against the ill effects of the foreign exchange offences on the economy of the country. (11.8)